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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 5. ORIGINAL.

EX PARTE: IN THE MATTER OF JOHN SCOTT,
PETITIONER.

PETITION FOR A WRIT OF HABEAS CORPUS.

FILED OCTOBER 12, 1887.

SUPREME COURT OF THE UNITED STATES.

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a Supreme Court of the U. S. October Term, 1887.

Ex Parte in the Matter of RUFUS A. AYERS, Petitioner.

Ex Parte in the Matter of JOHN SCOTT, Petitioner,

and

Ex Parte in the Matter of J. B. MCCABE, Petitioner.

Mr. William W. Gordon, of counsel for the petitioners, submitted to the consideration of the court motions for leave to file petitions for writs of *habeas corpus*.

Oct. 11, 1887.

b Supreme Court of the U. S. October Term, 1887.

Ex Parte in the Matter of RUFUS A. AYERS, Petitioner,

Ex Parte in the Matter of JOHN SCOTT, Petitioner,

and

Ex Parte in the Matter of J. B. MCCABE, Petitioner.

On consideration of the motions for leave to file petitions for writs of *habeas corpus*, it is now here ordered by the court that said motions be, and the same are hereby, granted; and it is further ordered that writs of *habeas corpus* issue as prayed in said petitions, returnable on the 17th instant.

Oct. 12, 1887.

c To the honorable judges of the Supreme Court of the United States:

Your petitioner, John Scott, respectfully shows that he is a citizen of the United States of America, a resident of the State of Virginia, and that he is the Commonwealth's attorney for the county of Fauquier, in said State; and that as such officer it became his duty to perform certain acts, which are set forth in the record accompanying the petition of Rufus A. Ayers, this day filed, and which your petitioner prays may be taken as a part of this his petition. Your petitioner asserts that the said record shows that the suit in which certain orders of the honorable judge of the court before whom it is pending was entered, and of which said acts your petitioner herein complains, is one over which the said honorable judge had no jurisdiction. Your petitioner further asserts that the said honorable judge, acting in the said case, over which your petitioner respectfully insists he had no jurisdiction, entered on the 8th day of October, 1887, the following order:

"*In re* JOHN SCOTT.

"The respondent in this case seems to the court, from his answer to the rule, to be so hopelessly blinded by the ancient doctrine of State sovereignty that he does not seem to know that on an illustrious day in her history Virginia gave her adhesion to the Constitution of the United States.

To punish a man under these circumstances as the court ought to punish a man of the ideas prevalent since the adoption of the Constitution, would be manifestly unjust, and would be as unjust as it would be to punish a blind man equally with one who can see.

The court, therefore, doth adjudge, order, and decree that for his contempt of this court said John Scott do pay a fine of ten dollars and dismiss the cases which he has brought in the circuit court of Fauquier county, Virginia, in violation of the restraining order heretofore made in the cause of Cooper *et als. vs.* Marye *et als.* on the the 6th day of June, 1887; and further that he enter satisfaction of the judgments heretofore obtained by him against the defendants in said causes, and that he stand committed to the custody of the marshal of this court until this order is obeyed and the fine hereby imposed upon him is paid.

And it is further ordered that the said John Scott do pay the costs of these proceedings.

HUGH L. BOND, *Circuit Judge.*"

Your petitioner states that, believing that the said judge was without jurisdiction in the cause, and therefore without authority to enter said last-named order, — declined to pay the fine so imposed or to comply with the other requirements therein made, and thereupon your petitioner was ordered by the said judge into the actual custody of Thomas W. Scott, U. S. marshal for the eastern district of Virginia, until your petitioner should fully comply with the requirements of said order.

Your petitioner further asserts that he is now detained under said order in the custody of the said marshal and is held and confined by him in the city jail of the city of Richmond, in Virginia.

Your petitioner insists that, as the said judge was without jurisdiction over the said cause in which he entered the said last named order, under which your petitioner is detained and imprisoned your petitioner is now so illegally detained and imprisoned without authority or due process of law.

Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, to be directed to the said Thomas W. Scott, United States marshal aforesaid, may issue in this behalf, so that your petitioner may be forthwith brought before this court to do, submit to, and receive what the law may require.

JOHN SCOTT.

Verification.

UNITED STATES OF AMERICA,
Eastern District of Virginia:

John Scott ~~Rufus A. Ayers~~, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the same and knows the contents thereof, and that the statements therein made are true, as he verily believes.

Subscribed and sworn to this 10th day of October, 1887.

{ Seal of Wm. B. Wall, U. S. Commissioner,
Eastern District of Virginia. }

WM. B. WALL, *U. S. Comm'r, &c.*

f [Endorsed:] Cooper, Jas. P., & *als*, *v*. Marye, Morton, auditor, & *als*. Petition of John Scott for writ of *habeas corpus*.

[Endorsed:] Sup. Court U. S. 1887, Oct'r term. No. 5. Original. *Ex parte* in the matter of John Scott, petitioner. Petition for writ of *habeas corpus*. Filed Oct'r 12, 1887.

g In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

JAMES P. COOPER and Others *against* MORTON MARYE, Auditor, &c., and Others.	No. 432.

Transcript of Record.

1 In the Circuit Court of the United States for the Eastern District of Virginia, at Richmond, Virginia, October 8th, 1887. In Equity.

JAMES P. COOPER, H. R. BEETON, F. J. BURT, H. J. CHINNERY, W. M. Chinnery, F. P. Leon, and W. G. Woolston, *against* MORTON MARYE, Auditor of the State of Virginia, R. A. Ayers, Attorney General thereof, the Treasurers of Counties, Cities, and Towns in Virginia, and the Commonwealth' Attorneys of Counties, Cities, and Towns in said State, whose Names Complainants have leave to Insert as they may be Discovered.	No. 432.

Be it remembered that heretofore, to wit, on the 6th day of June, 1887, before the Honorable Hugh L. Bond, circuit judge of the United States for the fourth judicial circuit and eastern district of Virginia, at chambers, in the city of Baltimore, Maryland, came the complainants, by counsel, and presented their bill of complaint against the defendants, which bill, with the exhibit attached thereto, is in the words and figures following, to wit:

2 *Bill of Complaint.*

Circuit Court of the United States for the Eastern District of Virginia.

JAMES P. COOPER and *als*. *vs*. MORTON MARYE and *als*.

To the Hon. Hugh L. Bond, judge thereof:

Complaining, showeth unto your honor your orators, James P. Cooper, H. R. Belton, F. J. Burt, H. T. Chinnery, W. M. Chinnery, F. P. Leon, W. G. Woolston, who sue for themselves as well as for all others in like situation who will come in and share the expenses of this suit, that they are citizens of the Kingdom of Great Britain, and subjects of Her Majesty Victoria, queen thereof; that by an act of her General Assembly, approved March 30th, 1871, the State of

Virginia provided for the issuing of a large number of her bonds to bear interest coupons, which she thereby contracted should be received in payment of all taxes, debts, and demands due to her, and her proper officers did issue thereafter many millions of dollars of said bonds as provided by said act, with said coupons attached thereto.

That by another act of her General Assembly, approved March 28th 1879, she provided for issuing another series of bonds, with like interest coupons attached thereto, and her proper officers did thereafter issue many millions of dollars of her bonds as provided by said act, with said coupons attached thereto.

That said coupons issued under both of said acts are payable to the bearer, and both as a contract to pay interest and as a contract that they shall be received in payment of taxes they are negotiable instruments for all time, free in the hands of any *bona fide* purchaser
for value from any equity or burden whatever; that there are
3 at this time overdue and outstanding in the hands of the
public at large more than $4,000,000 of these overdue coupons; that from the time said State issued said coupons and placed them upon the markets of the world her Legislature has been industriously at work seeking to destroy the same and make them of no value, and all the legislation hereinafter referred to is part of one scheme and plan to destroy the same and make them of no value; that by the 15th section of an act of her General Assemply, approved February 14th, 1882, all her officers are forbidden to pay and redeem the same according to the tenor of her contract as promises to pay interest on her said bonds; that by an act of her General Assembly, approved January 26th, 1882, the collectors of her taxes are forbidden to receive the same in payment of any taxes due to her; that after the enacting of both these statutes, to wit, in the month of ——, 1885, the Supreme Court of the United States decided, in the case of Poindexter *vs.* Greenhow, that a tender of said coupons by a taxpayer to the said State's collector of taxes paid and extinguished said tax due to her so as to deprive her Legislature of power to cause that tax-payer to be thereafter molested in respect to said tax.

That while her Legislature had made said coupons by the two acts above mentioned valueless as claims upon said State for money or as mediums by which taxes due to her might be paid and extinguished in the popular sense of those words, yet this decision of the Supreme Court attached to them an important value as tender in payment of taxes, whereby the tax-payer would become possessed of a shield and barrier between himself and said State, whereby he could prevent her from demanding of him anything else in payment of his taxes as aforesaid; that when said court made the decision aforesaid the market value of said coupons was very greatly depressed, the same being less than fifty cents on the dollar; but said decision gave a certain intrinsic value to said coupons which justified reasonable men in believing that the market value thereof would greatly enhance in value; that acting on their faith in the said decision of said Court and the belief caused thereby that the said State would be utterly unable by any legislative enactment to impair the value of said coupons as tender for taxes, your orators bought a large quantity of said coupons in the open money market of the city of London and elsewhere, the same amounting to more than $100,000, at less than fifty cents on the dollar, the whole costing more than $30,000.

That your orators made this purchase for the purpose of selling said coupons to the tax-payers of Virginia, to be used by them as
tenders for taxes due said State, many of which they have
4 sold to said tax-payers, and your orators believe, and
were justified in believing, that they would be able to sell said coupons to said tax-payers at a considerable advance over and above the price paid by them by reason of the quality imparted to them by said decision of valid tenders in payment of taxes.

That whilst said acts above mentioned, forbidding payment of said coupons in money and forbidding the receipt of them for taxes, were in force the Legislature of Virginia enacted another statute, which was approved on the 12th day of May, 1887, a copy of which is hereto attached, marked A, whereby the treasurer of each county, city, and town in the State is ordered to furnish to the Commonwealth's attorney thereof a list of all persons who have tendered the said State's coupons in payment of their taxes, and said Commonwealth's attorneys are ordered to institute suits by summary proceedings in the name of said State against all such persons to recover a judgment against them for the amount of said taxes so previously due by them; that the said tax-payers are thereby required to submit to a judgment against them by default or to appear in court and plead a tender of said coupons, and then prove affimatively that the coupons tendered by them are the State's coupons and not counterfeit and spurious coupons, the burden of proving the same being placed upon the tax-payer and the coupon being taken to be *prima facie* spurious and counterfeit.

That said act is repugnant to section ten of article one of the Constitution of the United States for the reason that, taken in connection with said act before mentioned of January 26th, 1882, it first commands the State's officers to refuse to receive those coupons which are undoubtedly her own as well as those which are spurious (and your orators charge that there are none such), and then commands her officers to bring said suits against those who have tendered said coupons of said State, as well as against those who have tendered spurious coupons; that it imposes upon the defendants heavy costs and fees, although all taxes due by them were paid by said tender, and it makes the judgment to be recovered in said suit a perpetual lien upon all the property of said tax-payer for said taxes, and for said costs and fees also, thus fixing a perpetual cloud upon the title of said tax-payer to his property.

That by another act of the General Assembly of said State, approved January 26th, 1886, it is provided that upon a trial of the issue to be made up under said act of March 12, 1887, the defendant shall produce the bond from which the coupon so tendered by him
was cut, and prove that it was cut from said bond.

5 Your orators charge that very few of said bonds are owned
by persons residing in Virginia, and in ninety-nine per cent.

of the cases the Virginia tax-payers would be utterly unable to produce said bonds.

That by another act of said General Assembly, approved ——, 1886, it is provided that the tax-payer undertaking to prove said tender shall not be allowed to introduce expert evidence to prove the genuineness of said coupons, and all that have been issued under either of said acts are engraved only as said acts provided they may be, and are not signed manually.

Therefore said tax-payers who cannot produce said bonds will be utterly unable to prove their coupons to be genuine upon said trial, the State thus forcing them into a lawsuit in her own courts, in which she has taken effectual precautions beforehand to make it impossible they can win and to make it a legal certainty that they must lose when they cannot produce said bonds; that said act is a device and trick enacted to take away from and deprive said coupons of their value as tender for taxes.

That the great bulk of Virginia's tax-payers pay small sums, and if her officers are allowed to enforce said act of May 12th, 1887, against them the profit to be derived from purchasing your orators' coupons will be too small to induce them to do so, and, indeed, it will be impossible for them to use said coupons at all, except in the very limited cases in which they can produce said bonds.

That the supreme court of appeals of the State of Virginia has decided in the winter of 1886–'7 that said acts requiring said bonds to be produced and forbidding the use of expert testimony are valid acts and not repugnant to the Constitution of the United States; that therefore, if the officers of said State are permitted to enforce said act of May 12th, 1887, your orators will not only lose the profit which they had a right to expect they would make when they purchased said coupons, but they will be unable to sell them to Virginia's tax-payers at any price, and thus their entire property in the same will be destroyed; and your orators charge and aver that in any event, unless they are granted the injunction hereinafter prayed for, they will lose a sum greater than $2,000.

Your orators would show further that there are in the State of Virginia about one hundred counties, cities, and towns, and that there is a treasurer and Commonwealth's attorney for each, but they have been compelled to present this bill so hastily that they have not yet been able to ascertain the name of each, which names they pray they may be allowed to insert in this bill when they
6 ascertain them. They are informed and believe and so charge that the treasurer of each county, city, and town in said State is about to report to each Commonwealth's attorney the name of every tax-payer who has tendered coupons, and each Commonwealth's attorney is going at once to institute the suits provided for by said act of May 12th, 1887, against persons holding coupons bought from your orators, as well as against all others; and they are informed and believe and so charge that in every case in which tenders of coupons have been made to the auditor of the State, who is Morton Marye (and many have been made to him), the said auditor, and Hon. R. A. Ayers, who is attorney general thereof, are about to

institute the suits which said act provides for their instituting, whereby all coupons which your oraters have sold to Virginia tax-payers will be condemned as spurious, although they are all genuine coupons issued by the State of Virginia, and all her tax-payers will be intimidated and deterred from buying from your orators and all others in the future any more of said coupons.

Your orators charge that — are very few, if any, tax-payers in Virginia whose taxes amount to a sum sufficient to justify them in making the contest with the State provided for in said act by appealing their cases to the Supreme Court of the United States, and thus your orators are absolutely deprived of the possibility of selling their coupons to any tax-payers whatever, unless to the insignificant number who might purchase with the intention of fighting out such a contest with said State.

Your orators are remediless in the premises save in a court of equity, where such matters are alone cognizable.

Your orators therefore pray that the said Morton Marye, auditor of Virginia, R. A. Ayers, the attorney general thereof, and the treasurer and Commonwealth's attorney of each county, city, and town in the State of Virginia may be made parties defendant hereto, and that they, their agents and attorneys, may be restrained and enjoined from bringing or commencing any suit provided for by said act of May 12th, 1887, or from doing any other act to put said statute into force and effect, and that until the hearing of a motion for said injunction a restraining order may be made to that effect.

That your orators may have all such other and general relief as the facts of their case may justify and to equity may seem meet. May the United States writ of subpœna issue; and your orator will ever pray, &c.

COMPLAINANTS,
By WM. L. ROYALL,
Their Solicitor.

7 State of Maryland, *City of Baltimore,* } *To wit:*

James P. Cooper, being first duly sworn, deposes and says that he is one of the complainants in the foregoing bill, and that the allegations thereof are true, as he verily believes.

JAMES P. COOPER.

Subscribed and sworn to before me this 6th day of June, 1887.
JOHN J. GRINDALL, *J. P.*

JAMES P. COOPER.

Sworn to and subscribed before me by James P. Cooper this 6th day of June, 1887, at the city of Baltimore, within the district of Maryland.

R. LYON ROGERS,
U. S. Commissioner for Maryland.

A copy.
Teste: M. F. PLEASANTS, *Clerk.*

8

Exhibit A with Bill.

An act to provide for the recovery, by motion, of taxes and certain debts due the Commonwealth, for the payment of which papers purporting to be genuine coupons of the Commonwealth have been tendered. (Approved May 12th, 1887.)

1. Be it enacted by the General Assembly of Virginia, That all taxes, including taxes on licenses, now due or which may hereafter become due to the Commonwealth, in payment of which any paper or instrument purporting to be a coupon detached from a bond of this State shall have been or may hereafter be tendered and not accepted as payment and not otherwise paid, may be recovered in the circuit court having jurisdiction over the county or corporation in which said taxes shall have been assessed, or if the tender was made to the auditor of public accounts in payment of taxes which he is authorized by law to receive the said taxes may be recovered in the circuit court of the city of Richmond.

2. The court shall have jurisdiction without regard to the amount of the taxes claimed and though the amount be less than twenty dollars.

3. The proceeding shall be by motion, in the name of the Commonwealth, on ten days' notice, and shall be instituted and prosecuted by the attorney for the Commonwealth or corporation in which the proceeding is, or if it be instituted by direction of the auditor of public accounts in the circuit court of the city of Richmond.

4. The notice may be served in any county or corporation in the State in the mode prescribed by the first section of chapter one hundred and sixty-four of the code (edition of eighteen hundred and seventy-three), or it may be served on any agent of the defendant in the county or corporation in which the proceeding is, and the word "agent," as here used, shall include any person who shall have made the tender aforesaid on behalf of the defendant, or if there be no known agent of the defendant in the said county or corporation it may be served by the publishing the same one time in some newspaper printed in the county or city where the tax was
9 assessed, or if there be no paper printed in such county or city, then in some newspaper published in some county or city nearest to the county or city where such tax was assessed.

5. The motion may be tried or heard by the court or jury as motions in other civil cases. If the defendant relies on a tender of coupons as payment of the taxes claimed he shall plead the same specifically and in writing, and file with the plea the coupons averred therein to have been tendered, and the clerk shall carefully preserve them. Upon such plea filed the burden of proving the tender and the genuiness of the coupons shall be on the defendant. If the tender and the genuiness of the coupons be established judgment shall be for the defendant on the plea of tender. In such case the clerk shall write the word "proved" and thereunder his name in his official character across the face of the coupons, and transmit

them, together with a certificate of the court that they have been proven in the case, to the auditor of public accounts, who shall deliver the coupons to the second auditor, receiving therefor the check of the second auditor upon the treasurer, which check he shall pay into the treasury to the credit of the proper tax account.

6. If the defendant fails in his defence and the taxes claimed are found to be due the State, any coupon filed by him with a plea of tender (and not spurious) shall be returned to him, and there shall be judgment for the Commonwealth for the aggregate amount of the taxes due and the interest thereon from the time they became due till the date of the judgment, with interest on the said aggregate amount from the date of the judgment until payment, and costs.

7. No antecedent lien of the Commonwealth for the taxes for which any judgment is rendered shall be deemed to be merged in the judgment or otherwise impaired by the recovery of the same, but such lien shall continue in force notwithstanding the judgment.

8. Every such judgment shall be docketed, as prescribed by law in other cases, and the clerk shall issue execution thereon, directed to the sheriff of any county (or sergeant of any city), who shall account for the money collected thereon to the auditor of public accounts.

9. Should coupons be tendered the officer in satisfaction of said execution, he shall note the fact of such tender upon the execution and return it to the clerk's office; and thereupon the auditor of public accounts may direct an action to be brought upon the judg-
ment. This action shall be instituted and prosecuted in the
10 mode herein prescribed for actions to recover judgments for
taxes, and similar actions may be instituted whenever coupons are tendered in satisfaction of any judgment obtained by the Commonwealth under the provisions of this act.

10. The clerk of the court in which any such judgment is rendered in behalf of the Commonwealth shall, as soon as it is rendered, transmit a certified abstract thereof to the auditor of public accounts, who shall record the same in a book to be kept for that purpose.

11. Immediately after the passage of this act the county and city treasurers, and all other officers authorized by law to collect or receive money for taxes due the Commonwealth, including the license taxes, shall report to the Commonwealth's attorneys of their respective counties and cities, and also to the auditor of public accounts, the names of all persons assessed or liable therein for taxes due the Commonwealth who have heretofore tendered (otherwise than for identification and verification) coupons for such taxes, and which taxes remain unpaid, the amount of the taxes due, on what account, and when they become payable, and a description, as far as possible, of the coupons tendered, and when tendered; and they shall thereafter make like reports whenever and as soon as any such tender may be made. As soon as the auditor of public accounts shall receive such reports he shall credit the proper officer with the taxes named therein for which coupons were tendered.

12. The attorneys for the Commonwealth, and the attorney general, when it is his duty under this act to represent the Commonwealth in any case in the circuit court in the city of Richmond, upon such report being made to them, or whenever they are otherwise informed of any such tender having been made, shall forthwith institute and prosecute such proceedings as are hereinbefore required.

13. In any case instituted under the provisions of this act, in which there is a judgment for the Commonwealth, a fee of ten dollars shall be allowed the attorney for the Commonwealth, or the attorney general, as the case may be, which fee and fees of the clerk and other officers for services rendered in the case, as well as such other costs as are allowed by law in other cases in which the Commonwealth is a party, shall be taxed in the costs against the defendant. The Commonwealth shall not be liable for any fees or costs in any proceedings under this act.

11 14. If any officer fail to perform any duty required of him by this act he shall be fined not less than one hundred dollars nor more than five hundred dollars.

15. This act shall be in force from it passage.

A copy.

J. BELL BIGGER,
Clerk of the House of Delegates and
Keeper of the Rolls of Virginia.

May 21, 1887.

A copy of the bill and exhibit.
Teste: M. F. PLEASANTS, *Clerk.*

46658.

12 And thereupon, upon the same day, to wit, the 6th day of June, 1887, the following order was entered, viz:

Circuit Court of the United States for the Eastern District of Virginia.

James P. Cooper, H. R. Beeton, F. J. Burt, N. J. Chinnery, W. M. Chinnery, F. P. Leon, and W. G. Woolston,

against

Morton Marye, Auditor, R. A. Ayres, Att'y General, the Treasurers of Counties, Cities, and Towns in Virginia, and the Commonwealth Attornies of Counties, Cities, and Towns in said State, whose names Complainants have leave to insert as they may be Discovered.

Upon reading the bill of the complainants, it is ordered that Morton Marye, auditor, R. A. Ayres, att'y general, each and every treasurer of a county, city, or town in the State of Virginia, and each and every Commonwealth attorney for a county, city, or town in said State, be restrained from bringing or commencing any suit against any person who has tendered the State of Virginia's tax-receivable coupons in payment of taxes due to said State, as provided for and directed by the act of the Legislature of Virginia, approved May 12th, 1887, described in the bill, and of which a copy is attached thereto, and that each and all of said parties, their agents and attorneys, be restrained from doing any act to put said statute into force and effect until the further order of the court. 13

And it is ordered that the motion for an injunction in this case be set down for hearing at the circuit court of the United States at Richmond, Virginia, on the first Monday in October next, provided that the attorney general of the State of Virginia or either of the defendants may move the court for an earlier hearing thereof after ten days' written notice to the solicitor of the complainants; and provided further, that a copy of this bill and of this order be served on the attorney general of the State of Virginia within ten days after the filing thereof.

June 6th, 1887.

HUGH L. BOND,
Circuit Judge.

Marshal's Return.

Executed this 7 day of June, 1887, by delivering to R. A. Ayres, attorney general, the within-named defendant, in person a true copy of this writ; also a true copy of the bill.

A. A. CHAPMAN,
Special Deputy Marshal.

14 And at another day, to wit, on the 11th day of July, A. D. 1887, the following order was entered:

James P. Cooper
vs. } In Equity.
Morton Marye, Auditor, &c., *et als.*

Upon reading the affidavit of S. Bolyn, bearing date July 6th, 1887, to be filed as of this date, it is ordered that J. L. McIntosh, treasurer of Loudoun county, Virginia, and J. B. McCabe, Commonwealth's attorney for said county, do appear at the court-room of the U. S. circuit court, at Richmond, Virginia, at 12 m., on the 28th instant, and show cause, if any they or either of them can, why they and each of them should not be attached for their alleged contempt in disregarding the restraining order heretofore granted in this cause; but a copy of this order shall be served upon the said McIntosh and McCabe not less than ten days before the said 28th inst.

HUGH L. BOND, *C't Judge.*

Marshal's Return.

Executed 14 day of July, 1887, by delivering to J. B. McCabe, Commonwealth's attorney for Loudoun county, in person, a true copy of this order, and by delivering to Mrs. J. L. McIntosh, for J. L. McIntosh, treasurer of Loudoun county, she being a member of the family and over sixteen years of age, and having explained to her the purport of same.

JNO. H. OVERBEY,
Spec. Deputy U. S. Marshal.

The affidavit of S. Bolyn, referred to in the foregoing order, is as follows:

LOUDOUN COUNTY, *to wit:*

15 Before me, W. B. Wilmarth, a notary public for and within the county of Loudoun, State of Virginia, personally appeared S. Bolyn, who made oath that as agent for and in behalf of certain citizens and tax-payers of the county and State aforesaid, whose names are herein below specified, he did, between the 1st day of Nov., 1886, and April 1st, 1887, tender to Jas. L. McIntosh, treasurer of said county, in said State, in payment of taxes for the year 1886, assessed against said parties in favor of the Commonwealth of Virginia, certain coupons known as tax-receivable coupons, purporting to be cut off of certain bonds of the Commonwealth of Virginia, issued under acts of Legislature of Virginia in 1871 and 1879, and which coupons, on their face and by operation of law, are and were receivable for all taxes, dues, and demands in favor of or due to the Commonwealth of Virginia; all said coupons were, at the date of said tender, past due, and said treasurer refused to accept the coupons and cost so tendered in payment of said taxes, although the exact amount thereof, and did not so refuse because of any claim or pretense that any of them were not genuine.

And further, that said coupons and costs were so tendered in behalf of said parties separately and apart, not jointly, whose names are herewith given, viz:

16 N. B. Peacock, Susan Gregg, W. H. Brown, Jr., Wm. H. Brown, Joshua Hatcher, W. T. Shumaker, W. H. Taylor, Edith Shumaker, W. Hoge, S. T. Pancoast's heirs, T. E. Taylor, Hannah Taylor, John Emerick, Samuel Crockett, Wm. F. Mercier, C. Paxson, Sam'l Davis, Enoch Fenton, I. & B. Piggott, John & W. Gregg, Wm. Gregg, S. N. Brown, Thos. R. Smith, W. Piggott, John Piggott, Sam'l D. Leslie, John Arnold, I. C. Hoge, Eli J. Nichols, Jonathan Mathews, Henry Saunders, T. S. Titus, G. C. Dulin, Geo. W. Titus, C. W. Fadeg, Jesse Hoge, Sam'l Brown, Chas. Nichols, Geo. W. Holmes, L. M. Holmes, Isaac Nichols, W. Henry Brown, Isaac Brown, Thomas Piggott, C. F. Otley, Joseph H. Pancoast, G. G. Craven, G. G. Craven, com'tee, Elizabeth Janney, Israel Warner, J. W. Garrett, H. R. Holmes, H. R. Holmes, ex'or of Pusey, W. T. Lemmon, Jas. Hoge's est., Jas. H. Cross, Hirst & Smith, Isaac Wilson, W. H. Wilson, F. P. Wilson, Eli J. Hoge, H. C. Gist & C., R. Paxson; and said Bolyn further made affidavit that said Jas. L. McIntosh, treasurer as aforesaid, did, on or about June 30th, 1887, and July 1st & 2d, 1887, as he is informed by J. B. McCabe, attorney for the Commonwealth for said county, make up a certain report or reports in his, said McIntosh's, handwriting, in form and substance such as is contemplated and required by sec. 11 of the act of Legislature of Virginia, approved May 12, 1887, known as "An act to provide for the recovery by motion of taxes," &c., and hand said reports to said McCabe, wherein the above-named parties are set down

17 the taxes with which for the year 1886 they were assessed, &c., &c. Said Bolyn further made affidavit that the term of office of J. W. Foster, att'y for the Commonwealth for Loudoun county, expired July 1st, 1887, and that the term of office of J. B. McCabe, att'y for the Commonwealth for said county elect, began on July 1st, 1887, and that as such attorney for said county he, said McCabe, gave notice he would, under the provisions of said act of May 12, 1887, move the circuit court of Loudoun, at its next Octo. term, for a judgment, in the name and favor of said Commonwealth of Virginia, against said several parties above named for the said taxes with which they were assessed for the year 1886, & and for which, long prior to May 12, 1887, they tendered the coupons and cash aforesaid in payment; said notices bear date July 1, 1887, were made up, as he is informed, from the reports of said McIntosh, treasurer, furnished on, before, or after July 1, 1887, and said notices have since, as said affiant has been informed, been served upon said several tax-payers above named, all of whom hold the written promise and guaranty of Jas. P. Cooper, from whom said coupons were purchased, in form hereto attached, specifying the amount thereof, &c.

Affiant further made affidavit that said J. B. McCabe stated to him on July 5th, 1887, that he, said McCabe, knew before he caused said notices to issue against said several tax-payers that there was
18 a suit pending in circuit court of U. S. for eastern district of Va., wherein said Cooper is complainant, and an order had been made restraining and enjoining said McIntosh, treasurer, and J. W. Foster, attorney for the Commonwealth for Loudoun county, from proceeding under act of May 12, 1887, until further order of court, &c., which had been served on them.

Given under my hand this 6th day of July, 1887.

W. B. WALMARTH,
Notary Public.

The notice referred to in and filed with the foregoing affidavit is as follows, to wit:

Notice.

JULY 1ST, 1887.

John Herst and John Smith, composing the firm of Mess. Hurst & Smith:

You are hereby notified that on the first day of the next term of the circuit court for the county of Loudoun motion will be made in the name of the Commonwealth of Virginia to said court for judgment against you in favor of said Commonwealth for the sum of ($45) forty-five dollars, with interest thereon as the law directs, the said sum of $45 being the amount of taxes assessed against you in the county of Loudoun, due by you to said Commonwealth
19 for the year 1886, in payment of which there was tendered to the treasurer certain paper or instrument or papers or instruments purporting to be coupon or coupons detached from a bond or bonds of said State, and not accepted as payment and not otherwise paid.

Done by virtue of an act of the General Assembly of Virginia approved May 12th, 1887.

J. B. McCABE,
Attorney for the Commonwealth.

The guaranty of James P. Cooper referred to in and filed with the foregoing affidavit is as follows:

Whereas Herst & Smith, of Loudoun, has purchased from James P. Cooper $45 of Virginia tax-receivable coupons, now, therefore, if the said Herst & Smith shall tender said coupons for his State taxes the said James P. Cooper hereby covenants and he is authorized by the Virginia committee of the corporation of foreign bondholders of London so to covenant that if the said Herst & Smith *is* molested in any way by the officers of the State of Virginia he, the said James P. Cooper will furnish the said Herst & Smith with all necessary counsel and will save *him* harmless on account of said tender.

Witness my hand and seal this 31 day of Nov., 1886.

911 Main street, Richmond, Va., ——, 188–.

JAMES P. COOPER. [SEAL.]

Witness:
WM. L. ROYALL.

20 *Answer of J. B. McCabe to Rule Against Him to Show Cause, &c. Filed July 28th,* 1887.

The answer of J. B. McCabe, Commonwealth's attorney for Loudoun county, Virginia, to a rule issued against him on the 11th day of July, 1887, to show cause why he should not be attached for contempt, &c.

To Hon. Hugh L. Bond, judge of the U. S. circuit court, &c.:

Respondent, reserving all just rights to exceptions to said rule, for answer thereunto says that at the time he committed the alleged contempt—

I. He had no legal nor official notice that there was pending such a suit as "Jas. P. Cooper *et als. vs.* Morton Marye, aud'r, *et als.*"

II. He had no legal nor official notice that any injunction had been issued by your honor restraining any officer of the Commonwealth of Virginia from proceeding to enforce the law passed by the General Assembly of Virg'a, approved May 12th, 1887, entitled "An act to provide for the recovery by motion of taxes and certain debts due the Commonwealth, for the payment of which papers purporting to be genuine coupons of the Commonwealth have been tendered."

21 III. Respondent had no legal nor official knowledge of the above-alleged facts.

IV. He had no legal nor official notice that his predecessor in office, Capt. J. W. Foster, had been served with restraining order in said suit; but respondent insists that a service upon Capt. Foster is not a service upon respondent; and even if respondent had notice

by his predecessor, the said Foster, showing him (which was not done) the restraining order served upon him—if one, indeed, was served—yet such notice would not make respondent party to the suit. This suit is either a suit against the State of Virginia or against individuals. If against the State, then void by XI amendment to the Constitution of the United States. If against individuals, then the individuals must be made parties by service of process. As said by Chief Baron Comyns, Com. Dig., Chancery D. 8, "No one shall be restrained by injunction if he is not warned." Respondent to this day has not been "warned." He was never served with process, and service upon Capt. Foster or any other man is not service upon respondent. J. W. Foster is a different "individual" from respondent, nor is he the attorney for the respondent. There is in
the county of Loudoun no office for the occupancy of the
22 "Commonwealth's attorney. J. W. Foster occupied one
building; respondent occupies a different building. There are no records kept by said officer; none were turned over to respondent upon his qualification nor since by said Foster, and accordingly there could be brought home to respondent no knowledge nor notice of process, except by service of the process or the handing of the same to him by said Foster, neither of which was done. Therefore respondent insists he is in no contempt to this court and should be discharged.

But, for further answer, if the above is not sufficient, first premising his statement that no contempt to your honor or to your honor's court was intended by respondent, and that he was not aware that any act of his could be so construed, says:

V. On the 26th day of May, 1887, by the qualified voters of Loudoun county, in Virginia, respondent was duly elected Common-
wealth's attorney, and on the 13th day of June, 1877, in the
23 county court of said county he qualified and gave bond as
the law directs, and on the 1st day of July, 1887, entered upon the discharge of the duties of his office.

Respondent avers that it was his duty and he was bound by his bond to the Commonwealth of Va. and by his oath of office to try to enforce all the laws passed by said Commonwealth. Among these laws respondent found the following. (Here insert said act of General Assembly of Va., approved May 12th, 1887.)

This act, under the penalty of not less than $100 nor more than $500, made it encumbent on respondent to give notice of certain suits. This he did, but he did it not in his own name but in the name of the "Commonwealth of Va.," under direct written instructions. He was acting as attorney for his client, and his client was the State, and a suit that stops him, stays him, from this is inevitably stopping the State itself. In such a case as this, differing, respondent would respectfully suggest, from any that has heretofore arisen, as Justice Bradley, in "Poindexter *vs.* Greenhow," U. S. Supr. Court, said, "The whole object is to coerce the State. To say other-
wise is to talk only for effect."

24 But the State cannot be sued. This all acknowledge, ex-
cept, possibly, Judge Hughes, in "Norfolk Trust Co. *vs.* Marye,"

where he seems to hold that a citizen of Va. may sue the State, though no other person can; but, to the contrary, see the 4 dissenting justices of the Supreme Court in "Poindexter *vs.* Greenhow."

But, further, the Revised Stats. of U. S., § 720, says: "The writ of injunction shall not be granted by any court of the U. S. to stay proceedings in any court of a State."

This statute "prohibits the Federal courts from enjoining a suit in a State court, because of the unconstitutionality of a State statute upon which that suit is founded. The proper remedy is by a writ of error." 2d circuit U. S. (Verm't), 1883 ("Ransealear & Saratoga R. R. Co. *vs.* Bennington & Rutland R. R. Co.), 18 Fed. Rep'ts, 617; Abbott's Nat. D., p. 700, and by Revised Stats., § 3224, formerly act of May 27th, 1872.

"No suit for the purpose of restraining the assessment or
25 collection of any tax shall be maintained in any court." This
prohibition "includes a suit to restrain the collection of any sum by authority of the U. S. having the form and color of a tax by any means authorized by law for the collection of taxes."

9th circ., U. S. (Calif'a), 1868, Howland *v.* Soule Deady, 413 (as N. D., 710).

A fortiori to restrain the collection of any sum by authority of a sovereign State. In "Mead *vs.* Merritt," 2 page R., 404, Mr. Chancellor Walworth, after acknowledging the principle that the "State courts cannot enjoin proceedings in the United States courts nor the latter in the former courts," said "not only county but public policy forbade the exercise of such a power."

Respondent is aware that there have been decisions from "Osborn *vs.* Bank of the U. S.," 9 Wheaton, 738, down to "Davis *vs.* Gray," 16 Wallace, 203, in which the above principles have been explained or in which the courts have held there were certain exceptions or cases not applicable to above laws; but respondent would call attention to the fact that said Revised Stat., § 3224, was enacted after nearly
all of said decisions upon which the U. S. courts have claimed
26 jurisdiction were rendered.

But, as was said of this last-mentioned decision of "Davis *v.* Gray" by the Supreme Court of the U. S. in "Cunningham *vs.* Macon & Brunswick R. R. Co.," 109 U. S., 446, "the case goes to the verge of sound doctrine, if not beyond it, and the principle should be extended no further."

But this case of "Jas. P. Cooper *et als. vs.* Marye, auditor, &c.," respondent would respectfully say, goes "a bow-shot" beyond any of them. Here a "non-resident and an alien," with whom the State has made no contract, for he is not a tax-payer ("Marye *v.* Parsons," Supreme C't of U. S.), at one "great swoop" takes in "each and every treasurer and Commonwealth's attorney of every county, city, and town in the State, the auditor of public accounts, and the attorney general of Virginia"—not indeed by name, except two, but, as "complainants" may discover, they "have leave to insist," thereby allowing complainants, though "a preliminary injunction is always an extraordinary exercise of judicial powers" (American Nicolson Pavm't Co. *vs.* Elizabeth, 3rd U. S. Circuit (N. J.), 4 Fish

Pat. Cas., 189), and, though "an injunction will not be granted if
there is a reasonable doubt of the validity of the law,
27 nor of the proper exercise of the power it confers, &c."
(same circuit, "Bonaparte *v.* Camden & Amboy R. R. Co.," Baldw., 205), to summons, and so gather, at their option, the treasurers and those that Virginia has selected to prosecute the criminals "against her peace and dignity," from their homes and from the protection of her rights to answer the complaints of these non-resident and non-tax-payers in a case of "*damnum absque injuria,*" in a case "to determine questions of law *in thesi.*" (Mr. Justice Mathews, in Marye *vs.* Parsons.)

Complainants have "no rights under a contract effected by this legislation." Virginia has never contracted that they should "deal in coupons" and make a profit therefrom by selling to *bona fide* tax-payers (unless they take out a license therefor, which respondent is informed and so charges they have not done), but even their "rights to pay their taxes in coupons and the immunity from further proceedings in case of rejected tender are not rights directly secured to them by the Constitution, and only indirectly, as they
happen in this case to be rights of contract which they hold
28 under the laws of Virginia." Sup. Court of U. S., "Carter
vs. Greenhow," on appeal from this court.

The contract under which complainants will lose is a contract with certain tax-payers, not a contract with Virginia, and accordingly no constitutional provision such as was claimed for plaintiff in "Carter *v.* Greenhow" is or can be denied to plaintiffs by this legislation. As was said in that case of "Carter *v.* Greenhow," "The mode in which Congress has legislated in aid of rights secured by that clause of the Constitution is, as is pointed out in the Civil Rights Cases, 109 U. S., 3–12, by providing for a review on a writ of error to the judgments of the State courts and by conferring jurisdiction upon the circuit courts of all cases where the sum or value exceeds $500. By act of Congress approved March 3d, 1887, amending this act it is made now $2,000 instead of $500. Congress has provided no other remedy for the enforcement of this right."

And in the case of "Pleasants *vs.* Greenhow" the U. S. Supreme C't upon a petition for an injunction by a citizen and tax-payer of
Va., held that this court had no jurisdiction to restrain by
29 injunction the collection of the tax.

Therefore respondent insists that this court had no jurisdiction; that its acts in granting the preliminary injunction were without authority of law and are null and void; and "unless the court had jurisdiction of the case the disobedience of an injunction order made therein will not be punishable as for contempt." 6th circ. U. S. (Mich)., 1878, Evans *v.* Peck, 7 Rep'ts, 70.

Having fully answered, respondent prays to be hence dismissed with his costs about this rule so unjustly expended.

J. B. McCABE.

Subscribed & sworn to before me this 28th day of July, 1887.
M. F. PLEASANTS, *Clerk.*

30 And at another day, to wit, at a circuit court of the United States for the district aforesaid, held at Richmond aforesaid on the 28th day of July, 1887:

JAMES P. COOPER *et al.*
v.
MORTON MARYE, Auditor, &c., *et als.* } In Equity. 432.

Upon motion of the complainants leave is given them to file an amended bill, which is accordingly done, and the motion for an injunction in this cause is to be heard upon the bill and the amended bill.

HUGH L. BOND,
Circuit Judge.

The amended bill referred to in the above order is in the words and figures following, to wit:

31 *Amended Bill.*

Circuit Court of the United States for the Eastern District of Virginia.

JAMES P. COOPER & *als.* *vs.* MORTON MARYE & *als.*

To the honorable judges thereof:

Complaining, showeth unto your honors your orators, James P. Cooper, H. R. Beeton, F. J. Burt, H. T. Chinnery, W. M. Chinnery, F. P. Leon, and W. G. Woolston, who sue for themselves as well as for all others in like situation who will come in and share the expenses of this suit, that they are citizens of the Kingdom of Great Britain and subjects of Her Majesty Victoria, queen thereof; that by an act of her General Assembly approved March 30th, 1871, the State of Virginia provided for the issuing of a large number of her bonds, to bear interest coupons, which she thereby contracted should be received in payment of all taxes, debts, and demands due to her, and her proper officers did issue thereafter many millions of dollars of said bonds.

That by another act of her General Assembly, approved March 28th, 1879, she provided for issuing another series of her bonds, with like interest coupons attached thereto, and her proper officers did thereafter issue many millions of dollars of her bonds, as provided by said act, with said coupons attached thereto.

That said coupons, issued under both of said acts, are payable to the bearers, and both as a contract to pay interest and as a contract that they shall be received in payment of taxes they are negotiable instruments for all time, free in the hands of any *bona fide*
32 purchaser for value from any equity or burden whatever; that there are at this time overdue and outstanding in the hands

of the public at large more than $4,000,000 of these overdue coupons; that from the time said State issued said coupons and placed them upon the markets of the world her Legislature has been industriously seeking to destroy the same and make them of no value, and all the legislation hereinafter referred to is part of one scheme and plan to destroy the same and make them of no value; that by the 15th section of an act of her General Assembly, approved February 14th, 1882, all her officers are forbidden to pay and redeem the same according to the tenor of her contract as promises to pay interest on her said bonds; that by an act of her General Assembly, approved January 26th, 1882, the collectors of her taxes are forbidden to receive the same in payment of any taxes due to her; that after the enacting of both these statutes, to wit, in the month of ——, 1885, the Supreme Court of the United States decided, in the case of Poindexter *vs.* Greenhow, that a tender of said coupons by a tax-payer to the said State's collector of taxes paid and extinguished said tax due to her so as to deprive her Legislature of power to cause that tax-payer to be thereafter molested in respect to said tax.

That while her Legislature had made said coupons, by the two acts above mentioned, valueless as claims upon said State for money, or as mediums by which taxes due to her might be paid and extinguised in the popular sense of those words, yet this decision of the Supreme Court attached to them an important value as tender in payment of taxes, whereby the tax-payer would become possessed of a shield and barrier between himself and said State, whereby he could prevent her from demanding of him anything else in payment of his taxes as aforesaid; that when said court made the decision aforesaid the market value of said coupons was very greatly depressed, the same being less than fifty cents on the dollar; but said decision gave a certain intrinsic value to said coupons, which justified reasonable men in believing that the market value thereof would greatly enhance; that acting on their faith in the said decision of said court, and the belief caused thereby, that the said State would be utterly unable, by any legislative enactment, to impair the value of said coupons as tenders for taxes, your orators bought a large quantity of said coupons in the open money market of the city of London and elsewhere, the same amounting to more than $100,000, at less than fifty cents on the dollar, the whole costing more than $30,000, and the interest of each of your orators
33 in said coupons so purchased is joint and not several. Your
orators believed, and were justified in believing, that they would be able to sell said coupons to said tax-payers at a considerable advance over and above the price paid by them by reason of the quality imparted to them by said decision of valid tenders in payment of taxes.

That your orators made this purchase for the purpose of selling said coupons to the tax-payers of Virginia, to be used by them as tenders for taxes due said State, many of which they have sold to said tax-payers to the amount of $50,000 for $15,000 or more, and that said tax-payers have tendered the same to the proper State officers in payment of their taxes due to said State, and that said officers refused to receive the same in payment of said taxes. Your orators do not own and have no means of controlling the bonds from which the coupons purchased by them were cut.

That whilst said acts above mentioned forbidding payment of said coupons in money and forbidding the receipt of them for taxes were in force the Legislature of Virginia enacted another statute which was approved on the 12th day of May, 1887, a copy of which is hereto attached, marked A, whereby the treasurer of each county, city, and town in the State is ordered to furnish to the Commonwealth's attorney thereof a list of all persons who have tendered the said State's coupons in payment of their taxes, and said Commonwealth's attorneys are ordered to institute suits by summary proceedings in the name of said State against all such persons to recover a judgment against them for the amount of said taxes so previously due by them.

That the said tax-payers are thereby required to submit to a judgment against them by default or to appear in court and plead a tender of said coupons and then prove affirmatively that the coupons tendered by them are the State's coupons and not counterfeit and spurious coupons, the burden of proving the same being placed upon the tax-payer and the coupon being taken to be *prima facie* spurious and counterfeit.

That said act is repugnant to section ten of article one of the Constitution of the United States for the reason that, taken in connection with said act before mentioned of January 26th, 1882, it first commands the State's officers to refuse to receive those coupons which are undoubtedly her own as well as those which are spurious (and your orators charge that there are none such), and then commands her officers to bring said suits against those who have tendered said coupons of said State as well as against those who have
tendered spurious coupons; that it imposes upon the de-
34 fendants heavy costs and fees, although all taxes due by them
were paid by said tender, and it makes the judgment to be recovered in said suit a perpetual lien upon all the property of said tax-payer for said taxes, and for said costs and fees also, thus fixing a perpetual cloud upon the title of said tax-payer to his property.

That by another act of the General Assembly of said State, approved January 26th, 1886, it is provided that upon a trial of the issue to be made up under said act of March 12th, 1887, the defendant shall produce the bond from which the coupon so tendered by him was cut and prove that it was cut from said bond. Your orators charge that very few of said bonds are owned by persons residing in Virginia, and in ninety-nine per cent. of the cases the Virginia tax-payers would be utterly unable to produce said bonds; that by another act of said General Assembly, approved January 21st, 1886, it is provided that the tax-payer undertaking to prove said tender shall not be allowed to introduce expert evidence to prove the genuineness of said coupons, and all that have been issued under either of said acts are engraved only as said acts provided they may be and are not signed manually.

Therefore said tax-payers who cannot produce said bonds will be utterly unable to prove their coupons to be genuine upon said trial, the State thus forcing them into a lawsuit in her own courts, in which she has taken effectual precautions beforehand to make it impossible they can win, and to make it a legal certainty that they must lose when they cannot produce said bonds; that said act is a device and a trick enacted to take away from and deprive said coupons of their value as tender for taxes.

That the great bulk of Virginia's tax-payers pay small sums, and if her officers are allowed to enforce said act of May 12th, 1887, against them the profit to be derived from purchasing your orators' coupons will be too small to induce them to do so, and, indeed, it will be impossible for them to use said coupons at all, except in the very limited cases in which they can produce said bonds.

That the supreme court of appeals of the State of Virginia has decided, in the winter of 1886–'7, that said acts requiring said bonds to be produced and forbidding the use of expert testimony are valid acts and not repugnant to the Constitution of the United States; that therefore, if the officers of said State are permitted to enforce said act of May 12th, 1887, your orators will not only lose the profit which they had a right to expect they would make when they purchased said coupons, but they will be unable to sell them to
35 Virginia's tax-payers at any price, and thus their entire property in the same will be destroyed; and your orators charge and aver that in any event, unless they are granted the injunction hereinafter prayed for, they will lose a sum greater than $2,000. Your orators charge that if said act of May 12th, 1887, is enforced the reclamations made upon them and which they will have to pay will amount to more than $2,000, and if it is enforced they will be unable to sell any more of said coupons so purchased by them, and the loss they will thus sustain will be far more than $2,000, exclusive of costs and interest.

Your orators would show further that there are in the State of Virginia about one hundred counties, cities, and towns, and that there is a treasurer and Commonwealth's attorney for each, but they have been compelled to present this bill so hastily that they have not yet been able to ascertain the name of each, which names they pray they may be allowed to insert in this bill when they ascertain them. They are informed and believe and so charge that the treasurer of each county, city, and town in said State is about to report to each Commonwealth's attorney the name of every tax-payer who has tendered coupons, and each Commonwealth's attorney is going at once to institute the suits provided for by said act of May 12th, 1887, against persons holding coupons bought from your orators, as well as against all others; and they are informed and believe and so charge that in every case in which tenders of coupons have been made to the auditor of the State, who is Morton Marye (and many have been made to him), the said auditor and Hon. R. A. Ayers, who is attorney general thereof, are about to institute the suits which said act provides for their instituting, whereby all coupons which your orators have sold to Virginia tax-payers will be condemned as spurious, although they are all genuine coupons issued by the State of Virginia, and all her tax-payers will be intimidated and deterred from buying from your orators and all others in the future any more of said coupons.

Your orators charge that there are very few, if any, tax-payers in Virginia whose taxes amount to a sum sufficient to justify them in making the contest with the State provided for in said act by appealing their cases to the Supreme Court of the United States, and thus your orators are absolutely deprived of the possibility of selling their coupons to any tax-payers whatever unless to the insignificant number who might purchase with the intention of fighting out such a contest with said State; and your orators further show that acts of the General Assembly of the State of Virginia, which
36 are repugnant to section 10 of article I of the Constitution of the United States, commanded the treasurer of each county to levy on and sell the property of each tax-payer who has tendered coupons in payment of his taxes; and said acts also command said treasurers to return the real property of such tax-payers delinquent where no personal property can be found to be seized and sold; and your orators charge, therefore, that where said officers are enjoined from bringing said suits hereinbefore described the treasurer of each county will proceed to execute said other unconstitutional acts by levying on such tax-payer's property, or by returning the same delinquent where no personal property can be found, thus creating a cloud upon the title of such tax-payer's property.

Your orators are remediless in the premises save in a court of equity, where such matters are alone cognizable.

Your orators therefore pray that the said Morton Marye, auditor of Virginia, R. A. Ayers, the attorney general thereof, and the treasurer and Commonwealth's attorney of each county, city, and town in the State of Virginia, all of whom are citizens of Virginia, may be made parties defendant hereto, and that they, their agents and attorneys, may be restrained and enjoined from bringing or commencing any suit provided for by said act of May 12th, 1887, or from doing any other act to put said statute into force and effect, or from levying on or returning delinquent any person who has tendered coupons in payment of his taxes, and that until the hearing of a motion for said injunction a restraining order may be made to that effect.

That your orators may have all such other and general relief as the facts of their case may justify and to equity may seem meet. May the United States writ of subpœna issue; and your orators will ever pray, &c.

COMPLAINANTS,
47630 By WM. M. ROYALL,
Their Solicitor.

STATE OF VIRGINIA, } *To wit:*
City of Richmond, }

James P. Cooper, being first duly sworn, deposes and says that the allegations of the foregoing bill are true to the best of his knowledge and belief.

JAMES P. COOPER.

Subscribed and sworn to before me this 28th day of July, 1887.
A. B. GUIGON, *N. P.*

The Exhibit A referred to in the foregoing bill, being the same as that attached to the original, is omitted here.

37 And on the same day, to wit, at a circuit court of the United States for the district aforesaid, held at Richmond aforesaid on the 28th of July, 1887:

JAMES P. COOPER *et al.*
v.
MORTON MARYE, Auditor, &c., *et als.* } In Equity.

&

In re J. B. MCCABE and J. L. MCINTOSH. } Proceeding for contempt.

These causes having been set for hearing on this day, leave is given for complainants to amend their bill of complaint, and the hearing is postponed for reasons satisfactory to the court and counsel until the 22nd day of September next, it being understood by the court that nothing further shall be done in respect to questions at issue till the hearing, but that all proceedings shall remain *in statu quo;* and J. B. McCabe and J. L. McIntosh having filed their answers to the rule heretofore awarded against, the proceeding against them is likewise postponed to September 22nd, 1887.

HUGH L. BOND,
Circuit Judge.

38 And at another day, to wit, on the 23d day of August, 1887, the following order was entered:

Upon reading the affidavit of Wm. L. Royall, hereto attached and to be filed by the clerk, together with the exhibits therewith, it is ordered that John Scott, Esq., attorney for the Commonwealth for Fauquier county, State of Virginia, shew cause before me, at the court-house in Richmond, in said State, on the 22d day of September, 1887, at eleven o'clock a. m. of that day, why he shall not be attached for his alleged contempt in violating the restraining order made in this cause on the 6th day of June, 1887, and that a copy of this order, August 23d, 1887, be served on said defendants on or before the 1st day of Sept., 1887.

HUGH L. BOND, *C't Judge.*

The foregoing order is endorsed as follows, viz:

Executed Aug. 31, '87, by delivering to John Scott, Commonwealth's attorney of Fauquier county, Virginia, a true copy of this order. Jno. H. Overberg, spec. deputy U. S. marshal.

The affidavit of Wm. L. Royall and the exhibits filed there-
39 with, referred to in the foregoing order, are in the words and
figures following, viz:

Circuit Court of the United States for the Eastern District of Virginia.

James P. Cooper, H. R. Beeton, *et al.*

v.

Morton Marye, Auditor, &c., R. A. Ayers, Atto. Gen'l, &c., *et als*.

Wm. L. Royall, being first duly sworn, deposes and says that he is solicitor for the complainants in the above-entitled cause; that Mrs. M. C. Stribling and C. E. Strother are residents of the county of Fauquier, in the State of Virginia; that they tendered to the treasurer of Fauquier county, in payment of taxes due by them to the State of Virginia for the year 1886, coupons cut from bonds issued by said State, which coupons bore the contract of said State that they should be received in payment of all taxes due to her; that John Scott is the attorney for the Commonwealth for Fauquier county, and that it appears by a certified copy of the restraining order made in this cause, hereto attached, that the said Scott was duly served with a copy of the same on the eleventh day of June, 1887.

Affiant attaches hereto a letter which he has received from Mrs. M. C. Stribling and a notice addressed to her by said Scott, and also
a letter received by him from C. E. Strother, together with a
40 notice addressed by said Scott to him, from which it appears
that both have been sued by said Scott under the act of the Virginia Legislature, approved May 12th, 1887, in violation of said restraining order.

Affiant has also received the letters, hereto attached, from J. S. Payne and Edw'd P. Turner, which show that the said Scott has violated the said order by sueing each of them.

WM. L. ROYALL.

Subscribed and sworn to before me this 20th day of August, 1887.

JACKSON BRANDT, *N. P.*

The exhibits filed with foregoing affidavit are as follows, viz:

Markham Sta., *Aug.* 17*th*, 1887.

Mr. Wm. L. Royall:

I enclose you notice received to-day from Warrenton, as you promised me when I purchased coupons of you last fall "to hold me harmless & provide me legal protection, in case I was in any way molested, free of all cost."

Now, Mr. Royall, I don't know what to do; so write to you & hope you will have all made right for me.

41 With the hope of hearing from you very quickly,

Yours most respectfully, M. C. STRIBLING.

Notice.

To Mrs. M. C. Stribling:

You are hereby notified that I shall, in the name and on behalf of the Commonwealth of Virginia, move the circuit court of Fauquier county, on the 6 day of September, 1887, for judgment against you for the sum of one hundred and twenty-two dollars and nineteen cents, with legal interest thereon from the 1 day of December, 1886, being amount of taxes due by you to the said Commonwealth for the year 1886 still remaining unpaid, and for the payment of which (otherwise than for identification and verification) papers purporting to be genuine coupons of the Commonwealth have been tendered.

See act of Assembly of Virginia, approved May 12, 1887, entitled "An act to provide for the recovery, by motion, of taxes and certain debts due the Commonwealth, for the payment of which papers purporting to be genuine coupons of the Commonwealth have been tendered."

JOHN SCOTT,
Commonwealth's Attorney.

42 MARKHAM, VA., *Aug. 18th*, 1887.

Wm. L. Royall, Esq.

DEAR SIR: Please examine the enclosed notice by Commonwealth's attorney of this county upon me, & write me what it amounts to & what I should do in the matter. Please answer fully & explicitly. Is it necessary I should attend that term of the court? By replying at once you will greatly oblige

Y'rs truly, C. EDW'D STROTHER.

Notice.

To G. T. & C. E. Strother:

You are hereby notified that I shall, in the name and on behalf of the Commonwealth of Virginia, move the circuit court of Fauquier county, on the 6 day of September, 1887, for judgment against you for the sum of sixty-three dollars and ninety cents, with legal interest thereon from the 1st day of December, 1886, being amount of taxes due by you to the said Commonwealth for the year 1886 still remaining unpaid, and for the payment of which (otherwise than for identification and verification) papers purporting to be genuine coupons of the Commonwealth have been tendered.

See act of Assembly of Virginia, approved May 12, 1887, entitled
"An act to provide for the recovery, by motion, of taxes and
43 certain debts due the Commonwealth, for the payment of
which papers purporting to be genuine coupons of the Commonwealth have been tendered."

JOHN SCOTT,
Commonwealth's Attorney.

WARRENTON, VA., *Aug. 18th*, 1887.

MY DEAR MR. ROYALL: I send you notice of the Commonwealth's atto. that he will move for judgment against Mr. Harrison, who tendered coupons under Mr. Cooper's guarantee.

I got the impression that there was a truce until the contempt cases shall have been disposed of. If my impression be correct, is not this suit a violation of that truce?

I presume you will have the treasurer and Commonwealth's atto. brought before Judge Bond for contempt.

Very truly yours, J. S. PAYNE.

Notice.

To C. K. Harrison:

You are hereby notified that I shall, in the name and on behalf of the Commonwealth of Virginia, move the circuit court of Fauquier
county on the 6 day of September, 1887, for judgment against
44 you for the sum of two hundred and forty-four dollars and
thirty-one cents, with legal interest thereon from the 1 day of December, 1886, being amount of taxes due by you to the said Commonwealth for the year 1886 still remaining unpaid and for the payment of which (otherwise than for identification and verification) papers purporting to be genuine coupons of the Commonwealth have been tendered.

See act of Assembly of Virginia, approved May 12, 1887, entitled "An act to provide for the recovery, by motion, of taxes and certain debts due the Commonwealth for the payment of which papers purporting to be genuine coupons of the Commonwealth have been tendered."

JOHN SCOTT,
Commonwealth's Attorney.

THE PLAINS, FAUQ'R CO., VA., *20th Aug.*, 1887.

DEAR SIR: I have just rec'd notification from our county circuit that suit will be instituted against me for the amount of taxes due the State, which I offered in coupons this spring. The circuit court will hold its session on the 6 prox. I write you for instructions in my case. Will it be necessary for me to attend the court in Warrenton on the 6th, and what steps shall I take?

Very resp'y, EDW'D P. TURNER.

45 Circuit Court of the United States for the Eastern District of Va. In Equity.

JAMES P. COOPER, H. R. BEETON, F. J. BURT, H. J. CHINNERY, W. M. CHINNERY, F. P. LEON, and W. G. WOOLSTON

vs.

MORTON MARYE, Auditor, R. A. AYERS, Attorney General, the Treasurers of Counties, Cities, and Towns in Virginia, and the Commonwealth Attorneys of Counties, Cities, and Towns in said State whose Names Complainants have Leave to Insert as they may be Discovered.

Upon reading the bill of the complainants, it is ordered that Morton Marye, auditor; R. A. Ayers, attorney general, each and every treasurer of a county, city, or town in the State of Virginia, and each and every Commonwealth attorney for a county, city, or town in said State be restrained from bringing or commencing any suit against any person who has tendered the State of Virginia's tax-receivable coupons in payment of taxes due to said State as provided for and directed by the act of the Legislature of Virginia approved May 12th, 1887, described in the bill, and of which a copy is attached thereto; and that each and all of said parties, their agents and attorneys, be restrained from doing any act to put said statute into force and effect until the further order of the court; and it is ordered that the motion for an injunction in this case be set down for hearing at the circuit court of the United States at Richmond, Virginia, on the first Monday in October next, provided that the attorney general of the State of Virginia or either of the defendants may move the court for an earlier hearing thereof after ten days' written notice to the solicitor of the complainants; and provided that a copy of this bill and of this order be served on the attorney general of the State of Virginia within ten days after the filing thereof.

June 6, 1887.

HUGH L. BOND, *C't Judge.*

A true copy.
Teste: —— ——.

The foregoing exhibit is endorsed as follows, viz:

Executed this 11th day of June, 1887, by delivering to John Scott, Commonwealth's attorney of Fauquier Co., the within-named defendant, in person, a true copy of this writ.

JNO. H. OVERBEY,
Spec. Deputy U. S. Marshal.

A copy.
Teste: M. F. PLEASANTS, *Clerk.*

46 *Answer of John Scott, of Fauquier, to Judge Bond's Rule. Filed Sept. 22d,* 1887.

Honorable Hugh L. Bond, judge of the circuit court of the United States for the eastern district of Virginia, at the court-house, in Richmond:

May it please your honor: In compliance with a rule issued by your honor against me to show cause before your honor, at the court-house in Richmond, on the 22nd day of September, 1887, at eleven o'clock a. m. of that day, why I should not be attached for contempt in disregarding a certain restraining order of your honor, made in the cause of Jas. P. Cooper, H. R. Beeton, F. J. Burt, *et als. vs.* Morton Marye, auditor, &c., R. Ayers, att'y gen'l, &c., *et als.*, on the 6th day of June, 1887, I appear now in your honor's court and submit this paper, which contains my answer to the said rule.

Your honor's restraining order forbade me, as Common-
47 wealth's attorney for the county of Fauquier, to discharge
certain duties imposed upon me as one of the Commonwealth's attorneys of the State of Virginia, by a statute of the Legislature approved by the Governor May 12th, 1887, which in its 14th section provides, in case of disobedience by any officer to it, a penalty of not less than one hundred nor more than five hundred dollars.

As your honor well knows, it is a principle, recognized by publicists of all civilized countries as the foundation of political life, that a citizen or subject doing an act enjoined upon him by the State is covered by the panoply of the State, and is exempt from every degree of personal responsibility except to his own sovereign.

As a State can act only through the agency of individuals, this immunity is necessary to enable it to preserve itself and perform its other high functions.

An example of the application of this public law occurs in the
history of the United States in the case of the State of New
48 York against McCloud, a British subject, who was released
from prison by the direction of Mr. Webster, Secretary of State, ordering a *nolle prosequi* addressed to the attorney general of the State of New York. It was a command of the political power addressed to the judicial power and was based on the fact that McCloud's action had been adopted by the British Government as one performed by its authority. (Webster's Works.)

The principle of exemption referred to applies with all its force to the States of the American Union and to their agents, for these States are admitted to be bodies politic in the highest and completest sense of the words. (Poindexter *vs.* Greenhow, 114 U. S. R., page 288.)

But it is made a condition to enable a defendant to avail himself of the exemption that "it is necessary for him to produce a law of the State which constitutes his commission as its agent and the warrant for his act." (*Ib.*)

With this condition I comply now by directing your hon-
49 or's attention to the law of Virginia, before referred to, and

to the 3rd section, which is in these words: "The proceeding shall be by motion in the name of the Commonwealth on ten days' notice and shall be instituted and prosecuted by the attorney for the Commonwealth of the county or corporation in which the proceeding is, or, if it be instituted by direction of the auditor of public accounts, in the circuit court of the city of Richmond."

This act of Assembly was passed obviously with the design to induce the holders of tax-receivable coupons to submit them for identification and verification as required by the previous act of January 14th, 1882, the condition upon which the Commonwealth allowed her treasurers to receive the coupons for taxes.

This law has been examined by the Supreme Court of the United States in Antoin *vs.* Greenhow and it was decided by that final arbiter to be in accordance with the Constitution. (107 U. S. R., page 770.)

The statute to which I have referred in justification of my
50 acts, being designed simply to render a previous statute effect-
ual, must be regarded as equally constitutional with it, for
the means are appropriate and therefore ought to protect me from
the censures of this court.

But in a very high quarter it is contended that if the State law which the agent or officer obeys be subsequently held to be unconstitutional by the court trying the cause it becomes a nullity and does not protect the officer from penal consequences, for only those laws—such is the doctrine—which are decided to be constitutional can be regarded by a Federal court as mandates of the State, an unconstitutional law, or such as a majority of the court may choose to say is unconstitutional, being but the unauthorized act of the individuals who compose the State government.

Thus is a State separated from its government without which it ceases to be a State.

To enable the learned judges to reach this eccentric con-
51 clusion it was found necessary to define a State to be "an
ideal person, intangible, invisible, immutable," and incapable
of wrong or error. (Mr. Justice Mathews in Poindexter *vs.* Green-
how, page 291.)

Thus, by the astuteness of a lawyer, a State is transformed into a mythical personage; along such strange lines does the judicial imagination sportively wander.

From what source that definition of a State of the Union was obtained is not known to me, but certainly it was not obtained from the Constitution and laws of the United States, the only lexicon which this court will consult in a case which so deeply concerns the highest franchise of a sovereign State, the liberty of its citizens, and the obedience of its officers.

May it please your honor, a State of the American Union is not a
myth, but is a living corporation. It is composed of a collection of
individuals inhabiting a defined geographical space, with a govern-
ment and laws to organize and impart to them the characteristics
of a body political, and which maintains constitutional
52 relations with the Government of the United States.

Thus defined a State is tangible, visible, mutable, and is capable of doing wrong and committing error, as the secession of Virginia and the other reconstructed States of south section will doubtless prove to so loyal a citizen as Mr. Justice Mathews.

The fourth section of article 4 of the Constitution provides that "the United States shall guarantee to every State of the Union a republican form of government." To convince your honor that this guaranty has been complied with in the case of Virginia I have but to refer to the re-admission of that State into the Union after the close of the civil war with a constitution accepted as republican by Congress. That was an act of the political power; it binds all, and this court cannot controvert or annul it.

Your honor will take judicial notice that the republican constitu-
tion of Virginia, accepted by Congress and guaranteed by the
53 United States, created a government of the people of Virginia,
who are the State of Virginia, and that its government must
be presumed by this court to be conducted in accordance with their wishes and by their commands. Its acts are their acts. They bind in contemplation of law as much as the acts of any deputy can bind his principal. This presumption of law, not the Supreme Court in the plenitude of despotic power seeking to subordinate the States to its absolute dicta, can break down or set at naught. Particularly is this true in this deplorable debt controversy, out of which this constitutional problem has arisen—a flower grown from a fetid soil—so interesting to every intelligent mind in the United States. It is known that over it the State of Virginia, or, to speak with a stricter propriety, a majority of the political body, has passionately taken jurisdiction, moving its representatives as puppets and dictating
legislation in relation to it.

54 If this reasoning be correct I conclude that, whether the
act of May 12 be considered constitutional or unconstitu-
tional, it is equally the act of the State of Virginia, and that I, its commanded agent and officer, am not in contempt because when placed in the dilemma of contrary orders I have yielded obedience to my natural sovereign whose bread I eat and whose laws I have sworn to obey whenever I act as Commonwealth's attorney.

The State which directs my official conduct is, by the law of the civilized world, responsible for it, and to the State of Virginia I refer your honor as the responsible party in this case.

Arraign Virginia before your judgment seat; visit your penalties on her head.

But another deduction may be drawn from this reasoning which it is well not to overlook in this place.

If it be true, as a constitutional proposition, that all the acts of a republican government are assumed to be the acts of the State, and
that this ruling of the Supreme Court is, indeed, a blow struck
55 at the sovereignty of the people of the States, it is a logical
consequence that when a Federal court taxes jurisdiction of
a State officer it thereby assumes jurisdiction of the State itself.

To hold otherwise is to evade its eleventh amendment and to treat the Constitution with contempt.

A single consideration will set this truth very clearly before your honor.

If, by afflicting the agents or officers of Virginia with imprisonment and confiscation, the Supreme Court can succeed in forcing the treasurers to accept coupons without verification and upon simple tender, upon whom, I ask, does the consequence fall? Not upon the treasurers; not upon the Commonwealth's attorneys. The consequence falls alone upon the State of Virginia, whose treasury, by this means, will have been bankrupted by unconstitutional action of the Supreme Court. The Supreme Court needs not to be informed
that behind those treasurers and these Commonwealth's attor-
56 neys the State of Virginia stands to be affected by all the de-
cisions against them.

Through all these mazes and crooked paths Virginia is the party whom the Supreme Court is seeking to reach; that State is the game they are hunting. Although the only party in interest, Virginia is not a party to the record, because the eleventh Amendment, which forbids a State to be sued in a Federal court by an individual, awkwardly stands in the way. No other reason can be assigned for the omission to stand her at the bar of the Supreme Court. Surely your honor will allow that this Court, because it is forbidden to entertain a suit against the State of Virginia, cannot therefore lay violent hands on me. A defect of power over the State is not a grant of power over the citizen.

This defect of jurisdiction significantly suggests that when th States fashioned the Constitution they did not design to confer
upon the Federal court that jurisdiction, and it affords strong
57 support to the opinion that when the Constitution declares a
State legislature shall not pass any law impairing the obligation of contracts it did not mean to include contracts made by the State itself, which, as a body political, it had the election to perform or not according to the dictates of its morality.

If, finally, it comes to be decided—for this great question is yet in a state of flunctuation—that a Federal court can constitutionally step between a State of the Union and its officers and agents and absolve them from obedience to it a most fatal blow will have been struck at the existence of the States of this Union.

The clouds will have begun to gather and preparation made for those evil times which prognosticators foretel- are ahead of this republic.

The States called this Union into existence, and from having been the massive pillars of a Federal system they will have sunk down
into the degraded vassals of the Supreme Court.

58 Your honor will be pleased to take notice that this Federal
Union, designed and constructed by the fathers of the republic for the habitation of a free people, may be destroyed as effectually by a consolidation of the States as by red-handed secession. When a stretch of judicial power is proposed which, if successful, must produce that result, surely, by this court, for that reason, it ought to be condemned as unconstitutional; but if your honor shall reject my arguments as vain and illusory and shall decide that I have acted

in contempt of your honor's authority, I am here to abide the consequences of your honor's displeasure.

All of which is respectfully submitted.

Richmond, September 22nd, 1887.

JOHN SCOTT,
Commonwealth's Attorney for Fauquier County, Virginia.

59 And at another day, to wit, at a circuit court of the United States for the district aforesaid, held at Richmond aforesaid on the 24th day of September, 1887.

James P. Cooper *et al.*
against
Morton Marye, Auditor, &c., *et al.*
} In Equity. 432.

Upon motion of the complainants leave is given them to file a second amended bill, which is accordingly done, and upon reading the same it is ordered that John R. Turner, clerk of the circuit court of Fauquier county, Virginia, his agents and attorneys, successors and representatives, be *be* restrained from issuing any execution upon the following judgments entered by the circuit court of Fauquier county, at its term for September, 1887, to wit:

The State of Virginia against Jas. R. Green, Thomas Iden, Martha
A. Anderson, as guardian, Martha A. Anderson, and as guardian,
W. L. Royall, Mary A. Hamilton, Ann E. Shumate, E. J. Shumate,
W. B. G. Shumate, George H. Lewis, John G. Cooke, W. L. Childs,
J. E. Armstrong, Charles B. Skinker, committee of Thomas Smith,
B. B. Turner, C. K. Harrison, M. B. McIlhany, James K.
60 Skinker, E. P. Turner, H. De Betts Norris, F. W. Maddux,
M. C. Stribling, E. T. Holton, C. M. Strother, G. T. Strother
& C. E. Strother, F. R. Welsh, Robert Murray, W. H. Strother, adm'r
of John R. Strother and Fannie Combs, as the same are set out and described in the amended bill and exhibit thereto attached, until the further order of this court; and it is further ordered that Robert Whitacre, sheriff of the county of Fauquier, his agents, attorneys, successors, and representatives, be restrained from levying or putting into force and effect in any manner any execution which may have been heretofore issued upon any one of the judgments aforesaid or which may be hereafter issued upon any one of the judgments aforesaid until the further order of the court.

HUGH L. BOND,
Circuit Judge.

Marshal's Return.

Executed this 3d October, 1877, by delivering to Jno. R. Turner, clerk circuit court Fauquier Co., & Rob't Whitacre, sheriff of Fauquier Co., true copies of this order.

T. W. SCOTT,
U. S. Marshal.

61 *Second Amended Bill Referred to in Preceding Order.*

Circuit Court of the United States for the Eastern District of Virginia

JAMES P. COOPER, H. R. BEETON, *et als.*
v.
MORTON MARYE, Auditor, *et als.*

To the honorable judges thereof:

Complaining, shew unto your honors your orators, James P. Cooper, H. R. Beeton, F. J. Burt, H. J. Chinnery, W. M. Chinnery, F. P. Leon, and W. G. Woolston, by this their second amended bill filed by leave of the court, that they refer to and adopt as part of this amended bill their original bill and their first amended bill filed by leave of court on the 28th day of July, 1887.

Your orators show that John Scott is the attorney for the Commonwealth of Fauquier county, Virginia, John P. Turner is clerk of the circuit court of said county, and Robert Whitacre is sheriff of said county.

62 That on the eleventh day of June, 1887, the marshal of this district served upon the said John Scott a duly certified copy of the restraining order made in this cause on the 6th day of June, 1887, as will appear by this return on file in this cause.

That the said John Scott, after the service thereof and notwithstanding the same, in violation of the terms thereof, instituted suits in the circuit court of Fauquier county against a number of persons residing therein, under the provisions of the act of the Virginia Legislature, approved May 12th, 1887, particularly set out in the original bill, to compel payment by them of taxes alleged to be due to the State of Virginia, each one of said persons having tendered payment thereof in the State of Virginia's tax-receivable coupons, and the said Scott well knew when he commenced said suits that each one of said *suits that each one of said* persons had so offered to pay his said taxes.

A certificate of the clerk of the circuit court of Fauquier
63 county, attached and marked W. L. R., shows the name of
each of said persons and the amount claimed from each.

Your orators would further shew that the noticies served upon said persons were returnable on the 6th day of September, 1877, and that on that day your orators caused R. R. Campbell, an attorney-at-law, duly qualified to practice in said court, to present to said court a duly certified copy of your orator's first amended bill herein, a duly certified copy of the restraining order, above mentioned, of June 6th, 1887, and duly certified copy of the order of the 23d of August, 1887, commanding the said John Scott to shew cause why he should not be attached for contempt in violating said restraining order, and the said Campbell moved said court upon said papers to continue said causes to the next term of said court, notwithstanding which the said court overruled said motions and proceeded to and did give judgment against each person mentioned in said Exhibit

W. L. R. for the amount demanded of each. Afterwards the
64 said Campbell moved said court to set said judgments aside
and grant a new trial in each case, and moved, further, that these motions for new trials be continued to the next term; but the court overruled the motion to continue said motions to the next term, and then overruled the motions for new trials.

Your orators would further shew that in entering said judgments in contempt and defiance of the order of this court perpetual liens have been established upon the property of the persons sued, which will cause such of said persons as have bought their coupons from your orators to demand indemnity from your orators.

Forasmuch, then, as your orators are remediless save in this court, in equity, your orators pray that the said John R. Turner, clerk of said circuit court of Fauquier county; Robert Whitacre, sheriff of said county, and John Scott, attorney for the Commonwealth of said
county, be made defendants hereto and required to answer the
65 same, but not under oath; that the said clerk be restrained
and enjoined from issueing execution on said judgments, and that said sheriff be restrained from levying or putting in force in any way any executions which may have been or may be issued on any of said judgments, and that the said John R. Turner, clerk, &c., be required to produce before this honorable court the order book and the minute book of the circuit court of Fauquier county for September, 1887; that such proceedings may be had as will remove from the titles of the persons named in said Exhibit W. L. R. all cloud upon the same.

May the U. S. writ of subpœna issue; and your orators will ever pray.

COMPLAINANTS,
By WM. L. ROYAL, *Sol.*

STATE OF VIRGINIA,
City of Richmond, } *To wit:*

This day William L. Royall personally appeared before me, A.
B. Guigon, a notary public in and for the city aforesaid, and
66 made oath that the allegations of the foregoing bill are true
to the best of his knowledge and belief.

Given under my hand this 21st day of September, 1887.

A. B. GUIGON, *N. P.*

In the Circuit Court of Fauquier County.

Commonwealth *vs.* James R. Green	$198 92
Same *vs.* Thomas Iden	35 08
Same *vs.* Martha A. Anderson, as gar.	8 40
Same *vs.* Martha A. Anderson & as gar.	41 04
Same *vs.* W. L. Royall	18 09
Same *vs.* Mary A. Hamilton	16 80
Same *vs.* Ann E. Shumate	9 12
Same *vs.* E. J. Shumate	5 07
Same *vs.* W. B. G. Shumate	25 71

Same *vs.* George H. Lewis	15	99
Same *vs.* John G. Cook	27	99
Same *vs.* W. L. Childs	33	94
Same *vs.* J. E. Armstrong	11	50
Same *vs.* Chas. B. Skinker, committee of Thos. Smith	29	93
Same *vs.* B. B. Turner	33	41
Same *vs.* C. K. Harrison	244	31
Same *vs.* M. B. McIlhany	15	76
67 Same *vs.* James R. Skinker	199	54
Same *vs.* E. P. Turner	49	76
Same *vs.* H. De Butts Norris	57	74
Same *vs.* F. W. Maddux	201	37
Same *vs.* M. C. Stribling	122	19
Same *vs.* E. F. Holton	132	75
Same *vs.* C. M. Strother	45	85
Same *vs.* G. T. Strother & C. E. Strother	63	90
Same *vs.* F. R. Welch	69	77
Same *vs.* Robert Murray	30	10
Same *vs.* W. H. Strother, adm'r of John R. Strother	12	60
Same *vs.* Fannie Combs	12	60

I certify that judgments were rendered by the circuit court of Fauquier county on 6th day of September, 1887, in each of the above cases for the amounts named, with int. on said amounts from 1st December, 1886, to said 6th Sept., 1887, & on the aggregate amounts from said last-named date until paid, & costs.

The defendants not appearing in either case.

I further certify that said judgments were founded upon notices similar to the following copy in the first-named case, varying only in names of parties and the amounts:

68 *Copy of Notice.*

"To James R. Green:

"You are hereby notified that I shall, in the name and on behalf of the Commonwealth of Virginia, move the circuit court of Fauquier county, on the 6th day of September, 1887, for judgment against you for the sum of one hundred and ninety-eight dollars and ninety-two cents, with legal interest thereon from the 1st day of December, 1886, being amount of taxes due by you to the said Commonwealth for the year 1886, still remaining unpaid, and for the payment of which (otherwise than for identification and verification) papers purporting to be genuine coupons of the Commonwealth have been tendered.

"See act of Assembly of Virginia, approved May 12, 1887, entitled 'An act to provide for the recovery by motion of taxes and certain debts due the Commonwealth, for the payment of which papers purporting to be genuine coupons of the Commonwealth have been tendered.'

"JOHN SCOTT,
"*Commonwealth Attorney.*"

69 And on the 7th day of September, 1887, the following order was entered in said cases:

This day came the parties, by their attorn*ies*, and the defendants in each of these cases, by R. R. Campbell, their attorney, moved the court to set aside the judgments rendered in these cases against them on yesterday and grant them a new trial; which said motions are ordered to be docketed and continued to a future day of the term.

And on the 9th day of September, 1887, the following order was entered:

This day came again the parties, by their attorn*ies*, and the court doth overrule the motions made by the defendants in these cases, on a former day of the term, to set aside the judgments entered against them and to grant them new trials.

Given under my hand this 10th day of Sept., 1887.

JNO. R. TURNER, *Clerk.*

70 And at another day, to wit, at a circuit court of the United States for the district aforesaid held at Richmond, in said district, on the 4th day of October, A. D. 1887:

JAMES P. COOPER *et al.*
vs.
MARYE, &c., Auditor, *et als.*
No. 432. In Equity.

Upon motion of the complainants leave is given them to file their third amended bill, which is accordingly done, and, upon reading the same, it is ordered that Wm. B. Foster, clerk of the circuit court of Wythe county, in the State of Virginia, be restrained until the further order of the court from issuing execution upon any one of the judgments entered by the said circuit court, at its term for September, 1887, in the following cases, to wit: Commonwealth of Virginia against E. S. Guggenheimer, T. P. Wappett, S. F. Ewald, J. C. Cook, J. G. Wilkinson, G. S. Bruce, L. D. Harrison, R. L. Poage & Co., Stern Bros., Maupin & Bruce, R. P. Blackwell & Co., Frank & Co., H. J. Heuser, V. C. Huff, agent; E. H. Robinson, R. E. L. Huddle, J. H. McGavock, J. H. Wilson, A. C. Whitman, J. L. Copenhaver, Jno. P. Copenhaver, Eph. Copenhaver, D. H. Porter, Jno. M. Porter, Jno. A. Bourne, Jno. King, W. H. Bolling.

And this order is to apply equally to any deputy, agent, attorney, successor, or representative of said clerk who may have personal knowledge of the same; 71 and it is further ordered that Isaac R. Harkrader, sheriff of said county, his deputies, agents, attorneys, representatives, and any other person who may have personal knowledge of this order, be restrained, until the further order of the court, from levying or putting in force in any manner any execution that may have been heretofore issued upon any one of said judgments and from levying or putting in force in any manner any execution that may be hereafter issued upon any one of said judgments; and it is further ordered that J. L. Gleaves, attorney for the Commonwealth for Wythe county, Virginia, shew cause at the court-house in Richmond, Virginia, on Saturday, the 8th day of October, 1887, at eleven o'clock, why he shall not be attached for his alleged contempt of this court in disobeying its restraining order, made in this cause on the 6th day of June, 1887.

HUGH L. BOND,
Circuit Judge.

Marshal's Return.

Executed this the 6th day of October, 1887, by delivering to J. L. Gleaves, Commonwealth's att'y of Wythe county, the within-named defendants, in person, a true copy of this order.

T. W. SCOTT,
U. S. Marshal,
Per O.

72 *Third Amended Bill Referred to in Preceding Order.*

Circuit Court of the United States for the Eastern District of Virginia.

JAMES P. COOPER, H. R. BEETON, *et als.*
v.
MORTON MARYE, Auditor; R. A. AYERS, Att'y Gen'l, *et als.*

To the Hon. H. L. Bond, judge:

Complaining, shew unto your honor, your orators James P. Cooper, H. R. Beeton, F. J. Burt, H. J. Chennery, W. M. Chennery, F. P. Leon, and W. G. Woolston, by this their third amended bill, that they refer to and adopt their original bill and their first amended bill as part of this.

Farther complaining, your orators shew that J. L. Gleaves is attorney for the Commonwealth for the county of Wythe, in the State of Virginia; W. B. Foster is clerk of the circuit court of said county, and Isaac R. Harkrader is the sheriff of said county;
73 that the following-named persons who reside in said county tendered to the proper officers the State of Virginia tax-receivable coupons in payment of their taxes due to her for the year 1886, to wit: E. E. Enggenheinen, T. P. Wappett, S. F. Ewale, J. C. Cook, O. G. Wilkinson, S. G. Bruce, L. D. Harrison, R. L. Poage & Co., Stern Bros., Maupin & Bruce, R. P. Blackwell & Co., Frank & Co., H. J. Heuser, V. C. Huff, agent; E. H. Robinson, R. E. L. Huddle, J. H. McGavock, J. H. Wilson, A. C. Whitman, J. L. Copenhauer, Jno. P. Copenhauer, D. H. Porter, Jno. M. Porter, Jno. A. Bourne, Jno. King, W. H. Bolling.

That they were refused; that thereupon the said J. L. Gleaves, att'y for the Commonwealth, notified each of said persons that he would move the circuit court of Wythe county to render judgments against each of them for their said taxes, under the provisions of the act of March 12th, 1887, at its term for September, 1887. The said act is set

out with plaintiff's original and first amended bill; that prior to
74 the day when they were notified that judgment would be moved
for, complainants caused a copy of the restraining order, made by the court in this case on the 6th day of June, 1887, to be delivered to the said J. L. Gleaves, att'y for the Commonwealth as aforesaid, a certified copy of which order is attached hereto; that notwithstanding said restraining order, and in defiance thereof, the said J. L. Gleaves moved said circuit court for said judgment, and said court rendered judgment against each one of the parties named at its said September term; that the clerk of said court is about to issue executions on said judgments, and the sheriff of said county is about to levy said executions and sell the property of said persons; that each one of said persons bought his coupons from your orators and received from James P. Cooper, one of your orators, his personal guarantee to save each one harmless; that if the said Cooper is
75 made liable upon said guarantee each one of your orators will
be responsible ratably to him; that the said persons have notified said Cooper that if they are harmed under said judgments they will hold him responsible upon his said guarantee, and they have demanded of him that he make the same good, which will cause your orators to suffer an irreparable injury.

Forasmuch, then, as your orators are remediless save in this court, in equity, they pray that the said Wm. B. Foster, clerk of the circuit court of Wythe county, may be restrained and enjoined from issueing executions on said judgments, and that Isaac R. Harkader, sheriff of said county, may be restrained and enjoined from levying or putting in force any *any* executions that may have been or may hereafter be issued on said judgments; that the clerk of said court may be required to produce the record books of said court before this honorable court; that proper orders may be made for cancelling said judgments; that Wm. B. Foster, clerk of the circuit
76 court of Wythe county, and Isaac R. Harkrader, sheriff of
said county, may be made parties defendant hereto and required to answer the same, but not under oath; that the United States writ of subpœna may issue; and your orators will ever pray.

WM. L. ROYALL,
Sol. for Complainants.

This day Wm. L. Royall personally appeared before me and made oath that the allegations of the foregoing bill are true to the best of his knowledge and belief.

WM. L. ROYALL.

Subscribed and sworn to before me this 4th day of October, 1887.

R. LYON ROGERS,
U. S. Commissioner for Maryland.

77 Circuit Court of the United States for the Eastern District of Va. In Equity.

James P. Cooper, H. R. Beeton, F. J. Burt, H. J. Chinnery, W. M. Chinnery, F. P. Leon, and W. G. Woolston

vs.

Morton Marye, Auditor; R. A. Ayers, Attorney General; the Treasurers of Counties, Cities, and Towns in Virginia, and the Commonwealth Attorneys of Counties, Cities, and Towns in said State whose Names Complainants have Leave to Insert as they may be Discovered.

Upon reading the bill of the complainants it is ordered that Morton Marye, auditor; R. A. Ayers, attorney general; each and every treasurer of a county, city, or town in the State of Virginia, and each and every Commonwealth attorney for a county, city, or town in said State be restrained from bringing or commencing
78 any suit against any person who has tendered the State of Virginia's tax-receivable coupons in payment of taxes due to said State, as provided for and directed by the act of the Legislature of Virginia, approved May 12th, 1887, described in the bill, and of which a copy is attached thereto, and that each and all of said parties, their agents and attorneys, be restrained from doing any act to put said statute into force and effect until the further order of the court; and it is ordered that the motion for an injunction in this case be set down for hearing at the circuit court of the United States at Richmond, Virginia, on the first Monday in October next, provided that the attorney general of the State of Virginia or either of the defendants may move the court for an earlier hearing thereof after ten days' written notice to the solicitor of the complainants; and provided that a copy of this bill and of this order be served on the attorney general of the State of Virginia within
79 ten days after the filing thereof.

June 6, 1887.

HUGH L. BOND, *C't Judge.*

A true copy.
Teste: M. F. PLEASANTS, *Cl'k.*

80 *Answer of J. L. Gleaves to Rule Against Him. Filed Octo. 8th,* 1887.

Hon. Hugh L. Bond, judge of the circuit court of the United States for the eastern district of Virginia, at the court-house in Richmond:

The answer of J. L. Gleaves, attorney for the Commonwealth for Wythe county, Virginia, to a rule issued by your honor and served upon him on the 6th day of October, 1887, ordering him to show cause at the court-house in Richmond, Virginia, on Saturday, the 8th day of October, 1887, at eleven o'clock, why he should not be attached for his alleged contempt of your honor's court in disobeying its restraining order made on the 6th day of June, 1887, in the cause of James P. Cooper, H. R. Beeton, F. J. Benton, *et als.* *vs.* Morton Marye, auditor, &c.; R. A. Ayers, attorney general, &c., *et als.*, would respectfully state the following:

On the 1st day of September, 1887, J. W. Repass, treasurer of Wythe county, furnished your respondent a list of parties
81 who had tendered him coupons in payment of taxes as he was required to do by sec. 11, p. 259, act extra session, 1887, approved by the Governor May 12, 1887. By § 12 of same act the attorney for the Commonwealth is required to "forthwith institute and prosecute such proceedings as are hereinbefore required." Section 14 of same act prescribes a penalty upon any officer failing to act or perform any duty imposed upon him by this act. Respondent, never having any notice of your honor's restraining order in the above cause, proceeded, as required by the statute above cited, to institute such proceedings as were necessary to recover judgment for the Commonwealth of Virginia against the parties who had tendered coupons in payment of their taxes; and afterwards, to wit, on the — day of September, 1887, judgment was rendered for the Commonwealth against the above-named parties, they allowing the said judgment to go by default. In all this proceeding respondent was acting as an officer of the State of Virginia, whose constitution and laws he was sworn to observe and enforce when he qualified as such officer.

Respondent states that he was never legally served with a
82 copy of your honor's restraining order in the suit above referred to until the 6th of Oct., when a copy of the order entered upon the third amended bill in the above cause of Cooper *et als.* *v.* Marye *et als.* was served upon him by the marshal*l* of the eastern district of Virginia.

Respondent states that a copy of the order entered by your honor on the 6 day of June, 1887, was handed to him by William H. Bolling, Esq., on the 9th day of September, 1887, but respondent claims that this was no legal or valid service of said order or such as is required by rule 15 regulating the service of process, which declares that "the service of all process mesne and final shall be by the marshal*l* of the district or by his deputy, or by some other person specially appointed by the court for that purpose, and not otherwise. In the latter case the person serving the process shall make affidavit thereof."

Respondent therefore claims that, never having had legal notice of any order or proceeding had and entered in your honor's court in the aforesaid cause of Cooper *et als.* *v.* Marye, auditor, &c.,
83 *et als.*, he has done nothing and been guilty of no act which would place him in contempt of your honor's court.

And now, having fully answered, respondent prays that the rule against him be discharged.

All of which is respectfully submitted.

J. L. GLEAVES,
Commonwealth's Attorney for Wythe County, Va.

The above answer was sworn to before me by J. L. Gleaves this 6th day of October, 1887.

WM. E. FULTON,
Com'r in Chancery for the County Court of Wythe Co., Va.

84 And now, at this day, to wit, at a circuit court of the United States for the eastern district of Virginia held at Richmond, in said district, this 8th day of October, A. D. 1887.

J. P. COOPER and Others
against
MORTON MARYE, Auditor, &c., and Others. } 432. In Equity.

This cause came on this day to be heard upon the motion of the complainants for a preliminary injunction and was argued by counsel; upon consideration whereof it is adjudged, ordered, and decreed, for reasons stated in writing and made part of the record, that the injunction be issued as prayed in the bill and remain in force until the further order of the court.

HUGH L. BOND,
Circuit Judge.

Thereupon the complainants, by counsel, called the attention of the court to the fact that the defendant, R. A. Ayers, attorney general of the State of Virginia, was guilty of contempt by his disobedience of the restraining order issued in this cause on the 6th day of June, 1887, and the said R. A. Ayers, being called upon to answer in this behalf, filed in open court his answer in writing, which answer is in the words following, to wit:

85 *Answer of Defendant, R. A. Ayers.*

The answer of R. A. Ayers, attorney general of the State of Virginia, to a rule awarded against him by this honorable court.

To the honorable judge of the circuit court of the United States for the eastern district of Virginia:

By an order entered in the chancery cause of James P. Cooper *et als.* against Morton Marye and others summoning him to show cause why he should not be fined and imprisoned for disobeying the injunction heretofore awarded in said suit restraining him and others from instituting the suits required by an act of the General Assembly of Virginia entitled "An act to provide for the recovery by motion of taxes and certain debts due the Commonwealth, for the payment of which paper purporting to be genuine coupons of the Commonwealth have been tendered," approved May 12th, 1887, by instituting a suit against the Baltimore and Ohio Railroad Co., 86 respondent, answering, says that he admits that he instituted the suit against the Baltimore and Ohio Railroad Company to recover taxes due by it to the State of Virginia after he had been served with the injunction order in this case; that he instituted the said suit because he was thereunto required by the act of the

General Assembly of Virginia aforesaid, and because he believed this court had no jurisdiction whatever to award the injunction violated. Respondent disclaims any intention to treat the court with disrespect, and states that he has been actuated alone with the desire to have the law properly administered.

R. A. AYERS,
Att'y Gen'l of Va.

Subscribed and sworn to before me this 8th day of October, 1887.
M. F. PLEASANTS, *Clerk.*

And thereupon, the answers of defendants Scott, McCabe, and Gleaves to the rule against them having been heretofore filed, the following orders were entered, viz:

87 *In Re* RUFUS A. AYERS.

This matter came on this day to be heard upon the rule heretofore issued against Rufus A. Ayers, attorney general of the State of Virginia, to shew cause why he should not be attached for contempt in disobeying the restraining order heretofore granted in the suit of Cooper *et al. vs.* Marye *et als.*, on the 6th day of June, 1887, and his answer thereto.

On consideration whereof the court is of opinion and doth order and adjudge that the said Rufus A. Ayers is guilty of contempt in his disobedience of said order, and that he do forthwith dismiss the suit of the Commonwealth *vs.* The Balto. & Ohio Railroad Company, instituted by him in the circuit court of the city of Richmond, and that for his said contempt he be fined the sum of $500 and stand committed in the custody of the marshal of this court until the same be paid and he purge himself of his contempt by dismissing said suit last herein mentioned.

HUGH L. BOND,
Circuit Judge.

In Re J. B. McCABE.

This matter came on this day to be heard upon the rule heretofore issued against J. B. McCabe, Commonwealth's attorney for the county of Loudoun, to shew cause why he should not be attached for 88 contempt in disobeying the restraining order of this court heretofore granted in the suit of Cooper *et al. vs.* Marye *et als.*, now pending in this court, and his answer thereto. On consideration whereof the court is of opinion, and doth order and adjudge, that the said J. B. McCabe is guilty of contempt in his disobedience of said order, aad that he do forthwith dismiss all suits under the act of May 12th, 1887, now pending in the circuit court of Loudoun county.

And the court doth further order and adjudge that the said J. B. McCabe for his said contempt be fined the sum of $100.00; that he be taken into the custody of the marshal of this court and by him held until the said fine be paid and he purge himself of said contempt by dismissing the suits brought or prosecuted in violation of the restraining order of this court, and that he pay the costs of these proceedings.

HUGH L. BOND,
Circuit Judge.

In Re JOHN SCOTT.

The respondent in this case seems to the court, from his answer to the rule, to be so hopelessly blinded by the ancient doctrine of State sovereignty that he does not seem to know that on an illustrious day in her history Virginia gave her adhesion to the Constitution of the United States.

89 To punish a man under these circumstances as the court ought to punish a man of the ideas prevalent since the adoption of the Constitution would be manifestly unjust, and would be as unjust as it would be to punish a blind man equally with one who can see.

The court therefore doth adjudge, order, and decree that for his contempt of this court said John Scott do pay a fine of ten dollars and dismiss the cases which he has brought in the circuit court of Fauquier county, Virginia, in violation of the restraining order heretofore made in the cause of Cooper & others *vs.* Marye & others on the 6th day of June, 1887; and, further, that he enter satisfaction of the judgments heretofore obtained by him against the defendants in said causes, and that he stand committed to the custody of the marshal of this court until this order is obeyed and the fine hereby imposed upon him is paid.

And it is further ordered that said John Scott do pay the costs of these proceedings.

HUGH L. BOND,
Circuit Judge,

JAMES P. COOPER *et al.*
vs.
MARYE, Auditor, &c., *et als.*
} In Equity.

In the matter of the rule issued October 4th, 1887, against J. L. Gleaves, attorney for the Commonwealth in the county of Wythe, returnable to October 8th, 1877— 90

This day came this matter to be again heard on the papers formerly read and the answer of said J. L. Gleaves this day filed, and was argued by counsel; whereupon the court doth adjudge, order, and decree that said J. L. Gleaves, attorney for the Commonwealth for the county of Wythe, in the State of Virginia, do forthwith proceed to dismiss the suits or mark satisfied the judgments mentioned in said rule of October 4th, 1887, and his answer thereto, as instituted by him—that is to say, the following cases in the circuit court of Wythe county:

Commonwealth of Virginia *vs.* E. S. Guggenheimer, T. P. Wappett, S. F. Ewald, J. C. Cook, J. G. Wilkinson, G. S. Bruce, L. D. Harrison, R. L. Poage & Co., Stern Bros., Maupin & Bruce, R. P. Blackwell & Co., Frank & Co., H. J. Henser, V. C. Huff, agent, R. E.

L. Huddle, J. H. McGavock, J. H. Wilson, A. C. Whitman, J. L. Copenhaver, Jno. P. Copenhaver, Eph. Copenhaver, D. H. Porter, Jno. M. Porter, Jno. A. Boarne, Jno. King, W. H. Bolling.

And he is ordered to report his action hereunder to this court on or before the 24th day of October, 1887.

Ordered further, that the rule herein, entered October 4th, 1887, against said J. Gleaves, attorney for the Commonwealth for the county of Wythe, in the State of Virginia, be, and the same is
91 hereby, enlarged until said 24th day of October, 1887.

HUGH L. BOND,
Circuit Judge.

UNITED STATES OF AMERICA, } ss:
Eastern District of Virginia, }

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, hereby certify that the foregoing is a true and complete transcript of the record and proceedings in the cause in the caption hereof mentioned up to the date hereof as the same remain in my said office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Richmond, Va., this 9th day of October, 1887.

[Seal United States Circuit Court, Eastern District of Virginia.]

M. F. PLEASANTS, *Clerk.*

92 *Opinion. Filed October 7th,* 1887, *by Hon.* HUGH L. BOND, *Circuit Judge.*

In the Circuit court of the United States for the Eastern District of Virginia.

Opinion.

THE VIRGINIA STEAMBOAT COMPANY
vs.
MORTON MARYE *et als.*

JAMES P. COOPER *et al. vs.* MORTON MARYE *et als.*

SAME *vs.* JAMES B. MCCABE *et als.*

SAME *vs.* S. B. WITT.

The bills of complaint filed in these cases have a common purpose, and that is to restrain the defendants, who are officers of the State, from putting into force certain acts of the Legislature recently passed in reference to tax payers who have tendered or shall hereafter tender the coupons of the bonds of the State in payment of taxes.

Upon the presentation of the bills of complaint a restraining order was issued, and this hearing is to determine whether or not an injunction should issue perpetually enjoining the defendants from proceeding to enforce the laws in question, as prayed in the bills of complaint. The cases have been argued together as if upon demurrer. There is no dispute about the facts, but inferences drawn from them by the complainants are denied. The bill of the steamboat company, a corporation chartered by the State, alleges that it was indebted to the State, in December, 1866, in a sum exceeding $2,000 for taxes assessed against it; that in December, 1866, the complainants tendered to Morton Marye, who then as now was the auditor of the State, genuine coupons cut from the bonds of the State and by law made receivable for taxes, to the amount of its indebtedness, which coupons the defendant, Marye, refused to receive because the act of the General Assembly of Virginia, approved January 26, 1882, forbade him so to do. The bill further alleges that by an act of the General Assembly of Virginia, approved May 12, 1887, the auditor, in conjunction with S. B. Witt, attorney for the commonwealth of Richmond, or R. A. Ayres, attorney general for the State, is required to bring a suit against the complainant in the circuit court of the city of Richmond for said taxes, which suit they threaten to bring notwithstanding the tender above mentioned, in which suit the complainant by the said act is required to plead the tender in writing, and an issue is to be made up to try whether the coupons so tendered are genuine or not. And the bill further shows that upon the trial of the issue so required to be made up the State of Virginia, by another act, approved January 26, 1886, requires the defendant in this action (the complainant here who has tendered coupons in payment of taxes) to produce the original bond from which the tendered coupons were cut, in order to establish their genuine character; and that by another act, approved January 21st, 1886, no expert testimony is allowed to be used at the trial of the issue, although coupons and the signature thereto are not written, but engraved, and heavy costs and penalties are provided for those defendants who do not, under these provisions of the law, make good their case. Copies of these statutes are filed with the bill, and are prayed to be made part thereof.

So far as the case of the steamboat company against Mayre is concerned it presents the principal questions for consideration. The amount involved in the suit or controversy is ample to maintain the jurisdiction of the court, but as the complainant and defendants are citizens of Virginia, the court would be without jurisdiction unless the case involves some question arising under the Constitution of the United States. That question is whether the acts of the General Assembly complained of in the bill and which they are about to enforce against the complainants are repugnant to section 10 of article I of the Constitution of the United States.

When the State of Virginia, by act of her General Assembly, approved March 30th, 1871, provided for the issue of her bonds, bearing interest coupons made in terms receivable for taxes, she entered into a contract with the holders of them to receive them when presented in payment of taxes due. They were made negotiable, payable to bearer, and like all other negotiable paper for the payment of money were *prima facie* genuine.

The Constitution of the United States declares that, having entered into a contract, no State shall pass any law impairing its obligation. The Supreme Court of the United States has said in Poindexter and Greenhow, 114 U. S. Reports, "that the legislation of Virginia, in relation to its debt up to that time, must be considered as a whole." The acts of Assembly in question must be taken together, as one is but an amendment to the other. The scheme of the whole is indivisable and cannot be separated into parts, and it is further declared that the whole legislation, in all its parts as to the creditors affected by it and not consenting to it, must be pronounced null and void. Since the rendering of this judgment the State of Virginia, as it appears from the bill in the case, has added three further amendments to the coupon legislation.

By the act of May 12th, 1887, the treasurer of each city, county, and town in the State is ordered to furnish the State's attorney with a list of all persons who have tendered coupons in payment of their taxes, and the attorneys are required to bring suit to recover the amount of taxes for which coupons are tendered. By the act of January 26th, 1886, it is provided in such suit the coupon holder shall produce the bonds from which the coupons were cut, and by the ——, 1886, that after producing the coupons the defendant taxpayers shall not prove by experts the genuine character of either bond or coupon. When we add these amendments to the legislation of Virginia, already declared by the Supreme Conrt to be void, they do not seem to improve the constitutional character of that legislation.

When first issued these coupons were negotiable instruments for the payment of money were *prima facie* genuine. Now it is provided that they shall be *prima facie* spurious, and shall not be received till affirmatively proved in some court genuine. When first issued the coupon itself was a whole self-sufficient contract, payable in money and receivable for taxes. Now it is made worthless for the purpose of payment of taxes without the accompanying bond, which itself is not receivable for taxes, and when added to this legislation the act of — ——, 1886, which forbids the only mode of proof of an engraved bond known to litigants when the obligor is perverse, it must appear that the value of a tax-receivable coupon is almost entirely destroyed. If the substance of these three acts of Assembly had been printed on the backs of the coupons when first issued, it must be apparent they never would have found a place in the money market of the world. I have no hesitation in saying, in view of the decisions of the Supreme Court in coupon cases which have come before it, that this subsequent legislation is in line with former efforts condemned by that court to destroy the value of the tax-receivable coupon in the hands of the present holder, and is in defiance of one of the three departments of the Government—the judicial department—to the judgments of which, as the supreme law of the land, every one is bound by the constitution to submit. It is just to say that at this hearing no one has attempted to defend the purposes of these acts or to maintain their constitutionality as a whole. Granting the unconstitutionality of the acts of the Assembly, the second question is, Has the circuit court jurisdiction to prevent the officers of the State from putting them in force against these defendants.

This is denied because of section 720 of the Revised Statutes, which provides, "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State except in cases where such injunctions may be authorized by law relating to proceedings in bankruptcy."

To this it is sufficient answer to say that so far as the steamboat company's case is concerned, proceedings in the State courts are as yet only threatened, and even had they been attempted it is equally sufficient answer to say that there can be no proceedings in any court, State or Federal, under any unconstitutional statute. The whole matter would be *coram non judice*, and the judgment of the court no protection to the officers attempting to enforce it.

So far as the steamboat company's case is concerned, we have State officers endeavoring to enforce an illegal statute against it, although it has paid its taxes in coupons, which the Supreme Court has decided to be a valid payment. This brings the case precisely within the principles laid down in Osborne against Banks, 9 Wheaton, 758. In that case the bill was filed against the auditor of Ohio to restrain him from proceeding against the bank under an act of the Legislature of that State, and the sole question then presented was, according to the record in that case, was the plaintiff entitled to relief in equity and to the writ of injunction, and the court decided that it was.

The act of the Legislature of Ohio was there characterized as an attempt to drive the bank of the State. It is not too much to say that the attempt here is to totally destroy the complainant's property in coupons, and to mulct it in costs for tendering that which the Supreme Court has solemnly decided the defendants were bound to receive in payment.

The remedy granted in Osborne against Bank was the remedy by injunction, and Mr. Justice Bradley, in the dissenting opinion in Poindexter and Greenhow, declares such to be the remedy of the citizen when threatened with an unconstitutional proceeding. It is a preventive remedy to stay the progress of approaching injury, and in accordance with a long line of decisions to the like effect, Mr. Field, in his late work on Federal courts, says: "If a State law is in conflict with the Constitution of the United States, and a State officer is about to execute it, this would be a proper case for the exercise of the original jurisdiction of a circuit court to restrain him.

We come next to consider the second case before the court, James P. Cooper *et als. vs.* Morton Marye *et als.*, which differs from the Steamboat Company in that the complainants are now resident aliens. So far, therefore, as the parties to the suit are concerned this Court is given jurisdiction by the statute, and the only objection to the exercise of it, beside those made in the steamboat case, is that the complainants have no such interest in the controvery or suit as to entitle them to relief in equity in this court. What is that interest? The bill alleges that the complainants are joint owners of $100,000 worth of the coupons of the State receivable for taxes; that they purchased them in open market for sale to the tax-payers of Virginia, and have already sold more than $50,000 worth of them to such tax-payers, many of whom and to a much larger amount than $2,000 have tendered these coupons in payment of their taxes; that the complainants are joint and several guarantors to the purchasers of these coupons that they are genuine coupons, and if the acts of assembly above referred to are enforced against tax-payers as threatened in this case and as already been done in the third and fourth cases by their contract with the purchasers who have so tendered the coupons for taxes they will have to pay all the costs, losses, and damages suffered by the tax-payers in the suit brought under these acts; and they further allege that the coupons unsold in their hands will be rendered worthless by the proceedings against the tax-payers which have already purchased and tendered a part of them; and they allege that the costs alone which, as guarantors, they would have to pay would amount to greatly more than a sum necessary to give jurisdiction to this court.

It is my opinion that this is a sufficient pecuniary interest to give complainants a standing in the circuit court. They are the holders of certain choses in action negotiable, valuable, marketable, and useful in the payment of taxes. Every person to whom the complainants sell them, and who use them for the only purpose for which they are sold, is required by law to be sued for so doing, and by law it is made impossible to defend the suit. All purchasers from the complainants when sued are entitled to call on them to defend such suits as may be brought, and the expenses of so doing is greater than the value of the coupons.

There is no question or doubt as to whether or not the defendant State officers will proceed to enforce these acts and create the loss to the complainant. The act is imperative, and the officers are bound to obey it till it is declared unconstitutional. In the case at bar, where suits have already been brought against purchasers, with guarantee in writing from complainants, there can be but little doubt that the amount in controversy exceeds the jurisdictional amount required by statute, and as little that the remedy by injunction to prevent a multiplicity of suits and stop grievous wrong attempted by State officers without any authority is the proper remedy. The case differs from that of Marye and Parsons. Here there is no attempt to make a State officer by mandatory injunction receive coupons from a coupon-holder who was not a tax payer, as was attempted then.

This is an application for injunction to prevent State officers from enforcing an unconstitutional law against tax payers who may purchase coupons for the payment of taxes from the complainants, and thus render those coupons they have sold and those they hold equally worthless. So far as the coupons in the hands of the complainants unsold are concerned it appears to me that when the State announces to all tax payers, who alone can or will purchase them, that if they do so the State will refuse to receive them for taxes, but will bring suit against every tax payer who offers them, it violates every obligation of its contract and utterly destroys the value of complainants' property. It is idle to say that complainants ought to wait until each small tax payer is sued before they seek to enjoin the officer.

The very object of the writ of injunction, as we said before, is to prevent wrongs and a multiplicity of suits likely to equal in number the number of coupons sold by them; and it is equally idle to say that the complainants have a remedy at law, for even if that were so, which is not the truth in fact, to forbid the equity court from issuing the writ of injunction there must not only be a remedy at law, but that remedy must be equally as prompt, certain, and efficient and general as the remedy in equity.

In the case of Allen against the Baltimore and Ohio railroad, which presented the question whether this court had the power to restrain an officer of Virginia in the execution of an unconstitutional statute, the Supreme Court, 114 U. S., 316, sums up the whole matter. Where the rights in jeopardy, says this court, are those of private citizens, and are of those classes which the Constitution of the United States either confers or has taken under its protection, and no adequate remedy for their enforcement is provided by the forms and proceedings purely legal, the same necessity invokes and justifies in cases to which its remedies can be applied, that jurisdiction in equity vested by the Constitution of the United States and which cannot be affected by the legislation of the States.

No one has attempted to defend the constitutionality of the system of legislation which we have been considering. The act of 1887 is popularly known through the public press as the "coupon crusher," and is well styled, for its effect is to destroy as well the negotiability as the tax-receivable character of the coupon.

Tne injunction will issue as prayed in each case.

[Endorsed :] Supreme Court U. S. 1887, October term. Nos. 4, 5, & 6. Orig'l. *Ex parte.* In the matter of R. A. Ayers, John Scott. (Exhibit.) Record in the case of Cooper *vs.* Mayre.

h THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Thomas W. Scott, marshal of the United States for the eastern district of Virginia, Greeting:

We command you that the body of John Scott, in your custody detained, as it is said, by whatsoever name he may be charged, together with return of the day and cause of his detention, you have before the Supreme Court of the United States, sitting in the Capitol of the United States, at the city of Washington, being the present seat of the National Government, on Monday, the 17th day of October inst., then and there to do, receive, and submit to all and singular whatsoever the said Supreme Court shall consider concerning him in this behalf; and have you then and there this writ, with your doings in the premises.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the twelfth day of October, in the year of our Lord one thousand eight hundred and eighty-seven.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

i [Endorsed:] Sup. Court U. S. Oct. term, 1887. No. 5. Original. *Ex parte* in the matter of John Scott, petitioner. Writ of *habeas corpus* and proof of service.

[Stamped:] Office Supreme Court U. S. Filed Oct. 15, 1887. James H. McKenney, clerk.

I, Jno. G. Nicolay, marshal of the Supreme Court of the United States, certify that I served the within writ by reading it to Thomas W. Scott, United States marshal for the eastern district of Virginia, and showing him the seal thereof, at Richmond, on October 14th, 1887.

JNO. G. NICOLAY, *Marshal.*

j To the honorable Supreme Court of the United States:

As I am commanded by the writ of *habeas corpus* hereto annexed, I here bring the body of John Scott, who is in my custody and detained by me by virtue of an order, judgment, decree, and commitment of the circuit court of the United States for the eastern district of Virginia, and I attach hereto and make a part of this my return a certified copy of said order and judgment, marked Exhibit A; and I further return that the said John Scott has not paid and refuses to pay the fine imposed on him by said order.

THOS. W. SCOTT,
Marshal of the United States for the Eastern District of Virginia.

k *On Attachment for Contempt.*

In the Circuit Court of the United States for the Eastern District of Virginia.

"*In re* JOHN SCOTT.

"The respondent in this case seems to the court, from his answer to the rule, to be so hopelessly blinded by the ancient doctrine of State sovereignty that he does not seem to know that on an illustrious day in her history Virginia gave her adhesion to the Constitution of the United States.

To punish a man under these circumstances as the court ought to punish a man of the ideas prevalent since the adoption of the Constitution, would be manifestly unjust, and would be as unjust as it would be to punish a blind man equally with one who can see.

The court, therefore, doth adjudge, order, and decree that for his contempt of this court said Mr. John Scott do pay a fine of ten dollars and dismiss the cases which he has brought in the circuit court of Fauquier county, Virginia, in violation of the restraining order heretofore made in the cause of Cooper *et als. vs.* Marye *et als.* on the the 6th day of June, 1887; and further that he enter satisfaction of the judgments heretofore obtained by him against the defendants in said causes, and that he stand committed to the custody of the marshal of this court until this order is obeyed and the fine hereby imposed upon him is paid.

And it is further ordered that the said John Scott do pay the costs of these proceedings.

Richmond, October 8th, 1887.

HUGH L. BOND,
Circuit Judge.

A copy.

[Seal United States Circuit Court, Eastern District of Virginia.]

Teste: M. F. PLEASANTS, *Clerk.*

[Endorsed:] Exhibit A.

l THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Thomas W. Scott, marshal of the United States for the eastern district of Virginia, Greeting:

We command you that the body of John Scott, in your custody detained, as it is said, by whatsoever name he may be charged, together with return of the day and cause of his detention, you have before the Supreme Court of the United States, sitting in the Capitol of the United States, at the city of Washington, being the present seat of the National Government, on Monday, the 17th day of October inst., then and there to do, receive, and submit to all and singular whatsoever the said Supreme Court shall consider concerning him in this behalf; and have you then and there this writ, with your doings in the premises.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the twelfth day of October, in the year of our Lord one thousand eight hundred and eighty-seven.

[SEAL.] (Signed) JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

True copy.

[Seal of the Supreme Court of the United States.]

Test: JAMES H. McKENNEY,
Clerk of the Supreme Court U. S.

m [Endorsed:] Supreme Court U. S. 1887, October term. No. 5. Original. *Ex parte* in the matter of John Scott, petitioner. Return to writ of *habeas corpus.*

[Stamped:] Office Supreme Court U. S. Filed Oct. 17, 1887. James H. McKenney, clerk.

n *On Return to a Writ of Habeas Corpus.*

Supreme Court of the United States, of October Term, 1887.

In Re RUFUS A. AYERS, No. —.

It is stipulated and agreed that in the above-stated case in the order and commitment attached to the marshal's return that the certified copy of said order attached and marked Exhibit A is erroneous, in that the parties to the suit set forth in the order are reversed, and instead of reading Marye *et al. v.* Cooper *et al.* should read Cooper